SUPREME COURT OF THE UNITED STATES.

No. 425.

CHARLES HART SMITH, APPELLANT,

vs.

THE WASHINGTON GAS-LIGHT COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Exhibit A	9	4
Exhibit B	13	5
Subpœna	14	6
Return of summons	15	6
Answer of Washington Gas-light Company	15	6
Exhibit A, Washington Gas-light Company	15	6
Replication of complainant	24	9
Deposition of Charles Wilson	27	10
Deposition of C. Hart Smith	30	12
Exhibit A	31	12
Exhibit B	39	15
Exhibit C	40	16
Exhibit D	48	19
Exhibit E	51	20
Deposition of Henry C. Wilson	52	20
TESTIMONY FOR DEFENDANT.		
Albert G. Hall	59	23
Joseph F. Brown	66	25
Exhibit F, (see page 67)	147	26
Exhibit G	69	27
Exhibit H	70	27
Exhibit I	73	28
Exhibit K	76	39
Exhibit L	78	31
Deposition of Samuel L. Brick	100	39
Deposition of Owen O'Hare	110	43
Rebutting testimony for complainant, H. C. Wilson	114	45

	Original.	Print.
Rebutting testimony for complainant, George W. Wilson	122	48
Rebutting testimony for defendant, Samuel R. Brick	128	50
Charles Hart Smith, recalled	138	54
Order to set cause for hearing	141	55
Decree dismissing bill and appeal	141	55
Decree affirming original decree on appeal	142	56
Order for appeal	143	56
Citation	143	56
Appeal bond	144	57

In the supreme court of the District of Columbia, the 5th day of July, A. D. 1866.

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, certify that originals, of which the following writings are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled—

CHARLES HART SMITH
vs.
WASHINGTON GAS-LIGHT COMPANY. } No. 417.—Equity docket 7.

In testimony whereof I have subscribed my name, and caused the seal of the said supreme court to be hereunto affixed the day and year above written.

[SEAL.] R. J. MEIGS, *Clerk.*

1 To the Hon. Andrew Wylie, judge of the supreme court of the District of Columbia, sitting in equity:

Charles Hart Smith, a citizen of the State of Maryland, brings this, his bill of complaint against the Washington Gas-light Company, a corporation duly incorporated by Congress, doing business and established in Washington city; and thereupon your orator complains and says that on or about the 18th day of May, 1859, the said gas-light company, which is prayed to be made a defendant, entered into a written contract with a certain Chas. Wilson, a true copy whereof is herewith filed, marked Exhibit A, and prayed to be taken as part hereof; that upon the faith of said contract and the privileges thereby secured to him, the said Wilson proceeded at once, at great expense and cost to him, to lease certain lots of ground at the intersection of 22d street and the canal, in the city of Washington,
2 which he leased for a term of years commensurate with the term of said contract, and with like benefit of renewal, and erected on said lots, or some of them, a large and valuable brick building and other buildings, and placed machinery therein for the purpose of manufacturing out and from the gas tar accruing, or to be received under said contract, lamp black, and also pitch and felt for roofing purposes, and also pitch for ships; that said contract was duly assigned by said Charles Wilson on the 14th November, 1850, to the firm of H. C. Wilson & Co., composed of said Charles Wilson and a certain Henry C. Wilson; and on the 8th day of April, 1861, the said Charles released and assigned all his interest in said contract to said Henry C. Wilson.

Your orator further showeth that, under said contract and assignments, said gas tar was regularly delivered over to the parties thereunto entitled under said contract, and was paid for by them under said contract until the first day of June, 1864; and that, on the expiration of said original term of five years, the said gas company

3 continued, until the 1st of December, 1864, to deliver to said Henry C. Wilson all the gas tar deliverable by them, as aforesaid, under said contract, without any payment being made by him therefor until the 21st day of December, 1864, when the said Wilson paid to said gas-light company the sum of two hundred and fifty dollars, and took therefrom a receipt, a true copy whereof, marked Exh. B, is herewith filed, and prayed to be taken as part hereof; that on the day of the date of said receipt (up to which time the said company continued to deliver said gas tar to said Wilson) the said Wilson exhibited the said receipt to your orator; and your orator, relying on the terms of said receipt, and on the fact that said company were then, and had been, delivering said gas tar to said Wilson uninterruptedly from the first day of June, 1864, then and there purchased from said Wilson, for the sum of two thousand dollars, all his interest in said contract; and on said day the said Wilson, by his writing indorsed thereon, duly assigned said contract to your

4 orator; and your orator hath ever since to this time been receiving, as such assignee, all the gas tar not wanted for the use of said company, except during a period of fourteen days, during which the said company refused to deliver said gas tar to your orator, whereby he sustained great loss and damage.

Your orator further showeth that, relying on the rights of said Wilson under said contract, your orator also purchased, for the sum of twelve thousand dollars, from said Wilson the improvements, machinery, buildings, and materials on said lot, together with his leasehold interest in said lots, which the said Wilson had renewed for another term of five years, to be computed from the first of June, 1864.

Your orator further showeth that the said gas-light company now threaten to deny and repudiate his right as such assignee longer to receive, after the 27th day of April, 1865, said gas tar; and they are about to sell and dispose of all said gas tar for the residue of the unexpired five years, computing from the first day of June, 1864, to some person or persons unknown to your orator, and have notified your orator that they will deliver no more to hand after said 27th April, 1865.

5 And your orator avers and charges that such sale will be subversive of the just rights of your orator in the premises; and, if not prevented by the injunction of your honorable court, the said company will inflict great and irreparable loss and damage on your orator, and for want of which gas tar your orator will be compelled to suspend all operation in his establishment aforesaid, as gas tar cannot be otherwise obtained in said city of Washington for the profitable working of said establishment; and your orator would thus lose the benefit of his said investment of money in said property, materials, machinery, and buildings, and in said contracts.

And your orator is advised and charges that the flagrant violation of contract, as threatened by said company, can alone be prevented by the interposition of your honorable court, and by decreeing the

specific performance of said contract, and by preventing a sale of said gas tar to any other person.

And in case your orator is unable to obtain an injunction as asked for, and the said company shall refuse to deliver said gas tar
6 to him until 1st of June, 1869, then your orator is advised and charges that he is entitled in equity to such damages as he hath sustained already, or may hereafter sustain by the non-delivery of said gas tar as in said contract, to the end that the said defendant may be decreed specifically to perform said contract until the first day of June, 1869, by delivering to your orator, as such assignee, all the gas tar specified in said contract of 1859, and by paying to your orator all such damages as he hath sustained, or may sustain, by the refusal of said company to deliver said gas tar to your orator, and that the said defendant, together with its president, B. H. Bartol, and its directors, H. L. Gow, C. A. Rodgers, Hudson Taylor, John Bailey, and each of them, may be enjoined and strictly prohibited from selling, or otherwise disposing of the gas tar made by said company, except to your orator, as allowed in the written contract of the 18th of May, 1859, and that your orator may have such other and further relief as may be right and proper.

And, also, that a receiver may be appointed, if to your honor it seems right, to take charge of and sell all the gas tar delivered
7 under said written contract, and hold or sell the same as your honor may direct.

May it please your honor to grant the United States writ of injunction enjoining and prohibiting the said gas-light company, its president, the said B. H. Bartol, and its directors, H. L. Gaw, C. A. Rodgers, Hudson Taylor, and John Bailey, their aiders and abettors, and each of them, from selling or otherwise disposing of the gas-tar made by said company, except to your orator as allowed in the written contract made on the 18th of May, 1859, until the further order of this court, and also the United States writ of subpœna directed to the said gas-light company commanding them to appear and answer this bill according to the usual course of this court.

CHAS. HART SMITH.
R. J. BRENT,
For Complainant.

[5-cts int. rev.]
Filed April 4, 1865.

DISTRICT OF MARYLAND, *to wit:*

Before the subscriber, a commissioner of the United States in and for the district of Maryland, personally appeared, this third
8 day of April, 1865, Charles Hart Smith, the within named complainant, and made oath on the Holy Evangely of Almighty God that the facts related in the aforegoing bill of complaint are true to the best of his knowledge and belief.

In testimony whereof I have hereto set my hand and seal at the city of Baltimore, within the district of Maryland, the 3d day of April, A. D. 1865.

[SEAL.] JOHN HANAN, *U. S. Commissioner.*

[5-ct int rev.]

Indorsement.

Ordered, this 4th April, 1865, that notice be given to the defendant to show cause on the 8th day of April inst. why an injunction should not issue, and a receiver be appointed as prayed.

By order of the court.

[ ]

9 *Exhibit A.*

This contract, made this eighteenth day of May, between the Washington Gas-light Company and Charles Wilson of the city of Washington :

Witnesseth, that the said gas-light company agrees to sell and furnish to the said Wilson, his administrators, heirs, or assigns, all the "gas tar" now on hand, or which they may hereafter make in said city for and during a period of five years, from the first day of June next ensuing, excepting and reserving only the right to use whatever quantities of tar which may from time to time be required by the said company for its own uses in coaling its own property within said city. The said company further agrees that in case of its refusal to renew this contract at the expiration of said five years, with the said Wilson, his administrators, heirs, or assigns, for the same amount per year, and upon the same conditions as herein specified, then and in that case to return to him or them the last year's payment of five hundred dollars, herein specified.

10 And the said Wilson agrees to take away from the gas factory of said company all the gas tar made during the said period of five years, from the first day of June next, and pay therefore the sum of five hundred dollars annually (one-half of said amount to be paid every six months) to said company, and to take all of the tar away, that the tar well may be kept pumped out, so as to leave it always capable of holding all the gas tar which may flow into it, and never to permit the said tar to discharge into the Potomac river or elsewhere under the penalty of an absolute forfeiture of this contract; and the said Wilson further agrees that he will renew this contract with said company for five years from the first day of June, 1864, should said company so desire at the same amount per year, and upon the same conditions as hereinbefore specified.

In witness whereof the said Charles Wilson has signed his name and affixed his seal, and George W. Riggs, jr., the president of said gas-light company, has signed his name as such president, and caused the corporate seal thereof to be affixed on the day and

11 year first before written.

(Signed) CHARLES WILSON. [SEAL.]

Attest:

(Signed) REMUS G. RIGGS.

(Signed) GEO. W. RIGGS, *President.* [SEAL.]

Attest:

(Signed) J. F. BROWN, *Secretary.*

For value received, I, Charles Wilson, hereby assign, transfer, and set over unto the firm of H. C. Wilson & Co., their heirs and assigns, the foregoing contract or agreement with the Washington Gas-light Co., and all benefit and advantage to be derived therefrom to be enjoyed by the members of said firm equally in every respect, and its responsibilities to be assumed in equal proportions.

In witness whereof I have hereunto affixed my hand and seal, this 14th day of November, A. D. 1859.

(Signed) CHAS. WILSON. [SEAL.]

Witness present:

(Signed) WM. E. SMITHSON.

We, H. C. Wilson and Charles Wilson, of the late firm of H. C. Wilson & Co., said firm being this day dissolved, do hereby sell and assign, transfer, and deliver to H. C. Wilson all benefit and advantage to be derived from this contract with the Washington Gas-
12 light Company hereto annexed.

Washington, April 8th, 1861.

(Signed) CHARLES WILSON. [SEAL.]
(Signed) HENRY C. WILSON. [SEAL.]

WASHINGTON, *December* 21*st*, 1864.

For value received, I, H. C. Wilson, hereby assign, transfer, and set over unto C. Hart Smith, his heirs and assigns, the foregoing contract or agreement with the Washington Gas-light Co., and all benefits and advantages to be derived therefrom, he assuming all responsibilities under said contract.

(Signed) H. C. WILSON. [SEAL.]

Witness:

(Signed) J. S. WHITE.

[Stamp.]

(Copy.)

13 *Exhibit B.*

WASHINGTON, D. C.,
Dec'r 21, 1864.

Received of H. C. Wilson the sum of two hundred and fifty dollars, being for all the tar made at the Washington Gas-light Company's works for six months from June 1st to December 1st, 1864, as per contract.

(Signed) A. G. HALL,
Cashier W. G. Lt. Co.

[Stamp.]

14 In the supreme court of the District of Columbia, April 4, 1865:

CHARLES HART SMITH, complainant,
against,
THE WASHINGTON GAS-LIGHT CO., defendant. } No. 417. Equity.

The President of the United States to the Washington Gas-light Company, * * * defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*.

Issued April 4, 1865.
Ret'd April 7, 1865.

MEMORANDUM.—That the defendant is to enter its appearance in this suit in the clerk's office on or before the special term to which this writ is returnable, otherwise the bill may be taken for confessed.

15 Served copy of this sum's on John Baily, one of the directors of the Washington Gas Co., April 5, '65.

W. H. LAMON, *Marshal*.

R. J. BRENT.

CHARLES HART SMITH
vs.
THE WASHINGTON GAS-LIGHT COMPANY. } 417; Eq. Doc. 7.

The answer of the Washington Gas-light Company to the bill of complaint against it, in the above-entitled cause exhibited:

This defendant, saving and reserving to itself all and all manner of exception to the said bill for the manifold errors and inaccuracies therein contained, for answer thereto, or to so much thereof as it is advised it is material for it to answer, answering says, that it is true, as thereon stated, that on the 18th day of May, 1859, it entered into the written contract with one Charles Wilson, a copy of which is annexed to said bill and marked "Exhibit A;" but that it does not know, nor is it advised, what property was leased by the said
16 Wilson, nor whether any was so leased, nor for what time it was leased, nor whether the said Charles Wilson erected a large and valuable brick building and placed machinery therein for the purpose in the said bill of complaint set forth, and humbly insists that the complainant ought to be put to due proof thereof; that it knows nothing of any assignment of the said contract on the 14th of November, 1859, to the firm of H. C. Wilson & Co., nor of any re-

lease by the said Charles Wilson, nor assignment by him of his interest therein to the said Henry C. Wilson on the 8th day of April, 1861, as set forth in said bill; that said defendant was never notified of such assignments, and it insists upon full proof thereof; and said defendant, further answering, says that it is true that the gas tar manufactured by it was regularly delivered until the first day of June, 1864, in accordance with the terms of the aforesaid contract, the said first day of June, 1864, being the time of the expiration of said contract, but said defendant denies that it continued to deliver gas tar under said contract to the said Henry C. Wilson until the first day of December, 1864, or for any time after the date of the
17 expiration thereof, to wit, the first day of June, 1864; but to the contrary thereof, it avers that the said contract having expired was never renewed, that on the day of the expiration of said contract as aforesaid the said Henry C. Wilson proposed to purchase the gas tar made at the works of defendants upon an entirely new and distinct contract, that his proposition was accepted accordingly, and that the gas tar delivered to him thereafter and until December, 1864, was delivered to him under the new arrangement, agreement, or contract aforesaid; and they further aver and charge that Charles Wilson, the party with whom the original contract was made, and who it is averred had assigned his interest therein, well knowing all of these facts, and especially that the said contract had expired and was not renewed, did, on the 21 day of December, 1864, pay the sum of two hundred and fifty dollars to the cashier of the said defendant, and did obtain from said officer the receipt, a copy of which, marked "Exhibit B," is filed with said bill of compl't; that said receipt was written by the said Chas. Wilson or was by him dictated to
18 the said cashier; that said officer was not the proper officer to whom to make such payments; that no former payments upon account of the said contract had ever been made to him by the said Wilson, and that said officer was ignorant of the new arrangement or contract between defendants and said Wilson; and that said Wilson well knowing that said officer was ignorant as aforesaid, obtained said receipt, by taking advantage of his ignorance, for the purpose of perpetrating a fraud upon defendant; that said receipt was not intended to be a renewal of the said contract, and that said Wilson well knew such to be the fact. And these defendants, further answering, says that it knows nothing of any purchase made by the complainant from the said Wilson of his interest in the said contract, nor of any assignment made by the said Wilson to said complainant, and they insist upon proof thereof; and it denies that any such assignment could have been made in good faith, because, as it avers and charges, the said complainant knew that the said contract between said Wilson
19 and defendant had expired, and had not been renewed; and said defendant, further answering, saith that it is untrue as set forth in said bill of complaint that the said complainant has been receiving since the said 21 of December, 1864, or at any time, all the gas tar, or any of the gas tar manufactured by defendant, as the assignee of the said Henry C. Wilson, of the contract aforesaid, but

to the contrary, it avers that the said complainant has been receiving the said gas tar under another and entirely different contract, made by him with the president of the said gas company, the terms of which said last-mentioned contract are that said complainant shall pay defendant fifty dollars per week for said tar, the said contract to be terminated at any time upon notice to complainant of thirty days, and payments thereunder to be made every three months, all of which will more fully appear from a letter addressed by the defendant, through its president, to the said complainant, a copy of which is hereunto annexed, marked ("W. G. L. Co., A,") as part of
20 the answer, and that the said complainant has made payments under the said contract last mentioned, and has in other ways recognized it as binding; and defendant, further answering, saith that it knows nothing of any purchase by complainant from said Wilson of any improvements, machinery, or buildings, or materials, or of his, said Wilson's, leasehold in any lots, as set forth in said bill, and insists upon proof thereof. but that if such purchase has been made as averred, it was made with full knowledge that the defendant would not deliver any gas tar under the contract with the said Wilson, and notice that such contract had expired, and was not, and would not be renewed; and defendant, further answering, saith that it is true as averred in said bill of complaint that defendant does repudiate and deny the right of complainant as assignee to receive any gas tar manufactured by it, and has always done so; that it is also true that defendant has notified the said complainant that it intends concluding the contract made by it with said complainant, a copy of
21 which is annexed to this answer, marked "W. G. L. Co., A," under and in accordance with its terms and conditions, but denies that any notice has been given to said complainant, as the assignee of the said original contract, as he avers in his said bill of complaint; and defendant, further answering, says that to so much of said bill as claims damages from defendant, for and by name of the complainant's pretended loss of the gas tar, defendant excepts, and prays that he may have the advantage of such exception as fully as if the same had been taken by special demurrer.

And said defendant having answered the several matters in the said bill of complaint, as fully as it is advised it is material for it to answer, prays to be hence dismissed with all of its reasonable costs, &c., &c., &c.

[SEAL.] KENNEDY & WEBB,
Solicitors for Def't.

Filed April 8, 1865.

22 DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Be it remembered, that on this 7th day of April, 1865, personally came before the subscriber, a justice of the peace in and for the said district and county, Joseph F. Brown, who being duly sworn, deposes and says that he is the secretary of the Washington Gas-light Company, that he is acquainted with the facts set forth in the annexed answer, and that in so far as they are stated as of knowledge

they are true, and in so far as they are stated upon information and belief, he believes them to be true.

Sworn before me—

[SEAL.]

N. C. MILLER,
Justice of the Peace.

[5-c. in. rev. stamp.]

[Copy.]

23 *Exhibit A.—W. G. L. Co.*

PHILADELPHIA, *January 24th*, 1865.

J. S. Brown, esq., sec'y of Gas Co., Washington, D. C.:

DEAR SIR: You will please deliver to Mr. C. Hart Smith the tar now on hand and all that is made (except such as may be used abou the works) by the gas company, on the following terms, viz: Mr. Smith is to pay $50; fifty dollars per week for the tar, time to com mence from the day the tar was commenced to be saved and to terminate (30) thirty days after the co. shall notify Mr. Smith that they wish it to cease.

Mr. Smith will give a weekly receipt for the tar, and pay for it every (3) three months, unless the delivery should terminate in less time, when he agrees to pay in full up to the end of the delivery.

Form of weekly receipt to be given by Mr. Smith.

Rec'd of Washington Gas Co., tar for one week ending (date to be inserted) for which I agree to pay fifty dollars at time of settlement as per agreement.

C. HART SMITH.

Washington, Jan. 1865.

24 You will please have this agreement carried out.

Yours, truly,

B. H. BARTOL,
Pres't of Gas Co., Washington, D. C.

"W. G. L. Co., A."

Replication, &c.—Filed April 20, 1865.

Supreme court of the district of Columbia.

C. HART SMITH, plaintiff,
vs.
THE WASHINGTON GAS-LIGHT COMPANY, defendant. } In equity, No. —.

The replication of the above complainant to the answer of the above defendant:

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold uncertainties, errors, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he doth and will aver,

maintain, and prove his said bill to be true, certain, and
25 sufficient in the law to be answered unto by the said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already proved.

ROBERT J. BRENT,
For Complainant.

26 In the supreme court of the District of Columbia, in chancery.

CHARLES HART SMITH
vs.
WASHINGTON GAS-LIGHT COMPANY. } Equity docket 7, No. 417.

I, Edmond F. Brown, an examiner appointed by said court, do hereby certify that on Thursday, the 27th day of April, A. D. 1865, R. T. Merrick, esq., of counsel for the complainant, and William B. Webb, esq., of counsel for the defendants in the above-entitled cause, appeared at my office, and stated that it was desired by the complainant that the evidence to be adduced in said cause should be taken orally before me this day, and that they, the said counsel, had mutually consented that the said evidence should be so taken at this time, and that they waived notice of the same.

Whereupon I, the said examiner, proceeded to take the testimony of the witnesses produced, as follows:

27 Charles Wilson, being duly affirmed as a witness for the complainant, doth depose and say, in answer to interrogatories proposed to him by R. T. Merrick, esq., solicitor for the complainants, as follows, viz:

I am the party who wrote the contract with the Washington Gaslight Company, a copy of which is filed in this case, marked Exhibit A, and which is now shown to me.

Simultaneously with this contract, and for the purpose of executing this contract, I leased certain property from Charles L. Coltman, which had been unoccupied for two or three years past. It was known as the Old Glass House, but when last occupied was used as an ice house. I took a written lease for five years, at $250 per year, with a covenant of renewal at my option of five years longer.

I then sent for my nephew, H. C. Wilson, of Philadelphia, and transferred to the firm of H. C. Wilson and Company, composed of H. C. Wilson and myself, all of my interest in the contract with the gas company and the lease. We then proceeded to prepare the buildings and property to carry on the business of manufac-
28 turing lamp-black and other materials for sale from the gas tar to be received from the company.

After having connection with the firm for about two years, I sold out my interest in the firm to H. C. Wilson. At that time, upon an estimate of the cost of improvements and fixtures, it amounted to about eight thousand dollars. The improvements and machinery are comparatively valueless, except for the purpose of manufacturing gas tar into articles of merchandise. The brick walls are good for old brick and the machinery as old iron; but for anything else, comparatively of little use.

Gas tar cannot be obtained in sufficient quantities from any other source than from the gas company located here; and if not obtained from them, I should consider the original outlay of $8,000 as comparatively lost to the owners of that property.

I am acquainted with the handwriting of Mr. A. G. Hall, cashier of the Washington Gas-light Company, and have often seen him write.

The receipt now shown me, dated Dec. 1st, 1863, contains, as I verily believe, his genuine signature.

The following is a copy of said receipt rec'd, Washington, D. C., of H. C. Wilson:

29 "Two hundred and fifty dollars in full for all the tar made at our works for six months, due and payable this date.

$250.

(Signed) "A. G. HALL,
Cash'r W. G'l't Co.
"E. F. B."

When I sold out to H. C. Wilson, the concern was in debt to about the amount of $3,500. He assumed the debt and paid me $5,000 for my interest. The work had all been done upon credit and borrowed money, neither of us having had any capital.

Two years before the contract was made my nephew, H. C. Wilson, came on here from Philadelphia to look for some such business, his father being engaged in similar business there, and had some talk about it with the officers of the company, but no arrangement was made then. Just before the contract in this case was made, Mr. Brown, the secretary of the company wrote me a note inquiring what had become of H. C. Wilson, and indicating that a contract could now be made for the gas tar.

This contract was then entered into, and during the negotiation Mr. Brown stated to me that the principal object was to get rid of
30 the tar. That they wanted a responsible person to take it away, because it was a nuisance, and they were held responsible for it, and threatened to be indicted; and the amount to be received was of less consideration than the certainty of it being taken away.

At 11½ a. m. adjourned until Tuesday next, the 2d of May, at 10 o'c. a. m.

EDM. F. BROWN,
Examiner in Chancery.

TUESDAY, *May* 2, 1865.

Met pursuant to adjournment.

The witness, Charles Wilson, appeared, and the counsel for defendants having no questions to ask him, he closed his testimony by signing the same.

CHAS. WILSON.

C. Hart Smith, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by R. T. Merrick, esq'r, solicitor for plaintiff, as follows:

I am the plaintiff in this cause, and reside in Baltimore, Md.

31 I am engaged in the manufacture of articles of merchandise from gas tar in Baltimore, and also in Washington, at a factory at the foot of 22d street west, formerly owned by Mr. H. C. Wilson. H. C. Wilson had a contract with the Washington Gas-light Company for the purchase of gas tar. This contract I purchased of him, and also purchased his buildings and machinery and unexpired lease of the land on which the buildings were situated, all for the sum of $14,250. This purchase was made on 20th November, 1864, and I took possession on the 1st of December following. A copy of the contract, with the assignments thereon, is filed in the proceedings as Exhibit A to the bill, and a copy of the lease, and the renewal and assignments thereof is now presented and hereunto annexed, marked Exhibit A, E. F. B.

Copy of lease.—Exh. A.

This indenture, made this seventeenth day of May, in the year of our Lord eighteen hundred and fifty-nine, between Charles L. Coltman, of the city and county of Washington, and District of Columbia, of the first part, and Charles Wilson, of the same place, of the second part:

32 Witnesseth, that the said party of the first part hath letten, and by these presents doth grant, demise, and to farm let unto the said party of the second part all that certain piece or parcel of ground situated in the said city of Washington, and distinguished on the plat or plan thereof as lots eight (8,) nine (9,) ten (10,) eleven (11,) twelve (12,) and thirteen (13,) in square eighty-nine (89,) with the appurtenances, for the term of five years, from the first day of June, A. D. eighteen hundred and fifty-nine, at the yearly rent or sum of two hundred and fifty dollars, to be paid in equal quarter-yearly payments.

It is further agreed by the said party of the first part that at the expiration of the before-mentioned term of five years, he will lease the aforementioned premises for the further term of five years upon the same terms and conditions as herein stated, at the option of the said party of the second part.

And it is further agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom.

33 And the said party of the second part doth covenant to pay to the said party of the first part the said yearly rent as heretofore specified, and that at the expiration of the said term of five years the said party of the second part will quit and surrender the hereby demised premises in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted, and a desire to renew the lease as hereinbefore provided also excepted; and the said party of the first part doth covenant that the said party of the second part, on paying the said yearly rent and performing the covenants aforesaid, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for the term or terms aforesaid.

In witness whereof we have hereunto set our hands and seals, this seventeenth day of May, A. D. eighteen hundred and fifty-nine.

C. R. COLTMAN. [SEAL.]
CHARLES WILSON. [SEAL.]

Signed, sealed, and delivered in presence of—
J. M. DUNCANSON.

For value received, I, Charles Wilson, hereby assign, trans-
34 fer, and set over to the firm of H. C. Wilson & Co., (this day formed,) and their heirs and assigns, the foregoing contract or agreement with Charles L. Coltman, and all benefit and advantage to be derived therefrom to be enjoyed by the members of said firm equally in every respect, and its responsibilities to be assumed in equal proportions.

In witness whereof I have hereunto affixed my hand and seal, this 14th day of Nov'r, A. D. 1859.

[SEAL.] CHARLES WILSON.

Witness present:
WM. T. SMITHSON.

Supplement to the above indenture, made this 5th day of May, one thousand eight hundred and sixty.

And it is hereby further agreed by the parties hereto that all buildings and improvements which may hereafter be built or placed upon the demised premises herein described, other than additions and improvements to the buildings on the premises at the date thereof, may be removed at the termination of said demise by the party hereto of the second part, they paying all the taxes and assessments caused by such additional buildings.

35 In witness whereof the parties hereto of the first and second part have hereunto set their hands and seals the day and year above written.

[SEAL.] C. L. COLTMAN.
By ROB'T COLTMAN, *Att'y.*
H. C. WILSON & CO.
[SEAL.] Per H. C. WILSON.

Signed, sealed, and delivered in presence of—
J. M. DUNCANSON.

We, H. C. Wilson and Charles Wilson, of the late firm of H. C. Wilson & Co., said firm being this day dissolved, do hereby sell and assign, transfer and deliver to H. C. Wilson all benefit and advantage to be derived from this contract and supplement thereto, with Charles L. Coltman, which is hereto annexed.

CHARLES WILSON.
HENRY C. WILSON.

Washington, April 8, 1861.

Witness:

In conformity with the provisions contained in the foregoing lease, at the request of the lessee, the term of the same is extended to five years more from the first of June, 1864, and to expire on the 1st day of June, 1869, and to be in full force and virtue until the said
36 1st day of June, 1869, and no longer, and upon the conditions and obligations thereof in all other respects as set forth therein.

As witness our hands this eighth day of June, 1864.

JAS. ADAMS,
ROB'T COLTMAN,
Trustee of C. L. C., dec'd.
H. C. WILSON.

Witness:
S. B. BOARMAN.

WASHINGTON, *December 1st*, 1864.

For value received, I, Henry C. Wilson, hereby assign, transfer, and set over to C. Hart Smith, of the city of Baltimore, State of Maryland, his heirs and assigns, the foregoing contract or agreement with Charles L. Coltman, and all benefits and advantages to be derived therefrom.

HENRY C. WILSON.

Witness:
J. SIBLEY WHITE.

[The counsel agree that this may be filed in the cause, and read in evidence to have the same effect as the original lease.]

37 I bought the contract and lease in good faith on the strength of representations made by him, and a receipt which he showed me from the gas company. There were two distinct transactions. The tar contract and buildings I contracted for and purchased upon my faith in representations made by Mr. Wilson that the tar contract was subsisting, and although I then took possession, this contract of sale and purchase was not to be consummated until he showed me the evidence that the tar contract was subsisting. In the meantime I went on working up the material on hand, when he

showed me the receipt, a copy of which is filed in this case, marked Exhibit B, to the bill, upon which the contracts of sale and purchase were consumated.

On the 21st of December I commenced hauling tar from the works under my contract. I hauled that day, the 23d, and the 24th, when Mr. Brown, the secretary of the company, forbid my taking any more until a new arrangement was made for it. I had no tar
38 from them from that time until January 26th, making 31 days that I could not run my stills for want of tar. Had I had tar during those 31 days I could have made 625 barrels of pitch, and had orders at the time for all I could make, at a price which would have paid me $2 per barrel clear profit, making a direct loss to me in that item alone of $1,250. In addition to this was the expense of paying my men while I could not keep them employed, and two teams, amounting together to $8 per day, which I estimate to have been a direct loss to me of $248.

Since the 24th of January I have received the tar regularly. I was then obliged to have the tar to enable me to fulfil government contracts, which I had on hand. Mr. Bartol, president of the company, offered to let me have it at $50 per week with the understanding that it was not to affect any right that I might have under the contract, and wrote me partly to that effect, as per his letter here presented.

(Said letter is hereunto annexed marked Exhibit B, E. F. B.)

39 *Exhibit B.*

PHILADELPHIA, *Jan'y* 30, 1865.

C. Hart Smith, esquire:

DEAR SIR: Yours of the 28th duly rec'd. You must give weekly receipts exactly in the language we agreed on.

But I agree now, by this letter, that the $50 per week arrangement being temporary in its character, and for mutual benefit, is not to effect the claims of either party.

Yours, truly,

B. H. BARTOL,
President of Gas Company, Washington, D. C.

Exhibit B.—E. F. B.

Mr. Bartol and myself had several conversations regarding this temporary arrangement for the tar, and he stated distinctly that he did not wish by this arrangement to injure any claims I might
40 have on the contract, but wished to have the tar taken away from the works, which was more important to them that anything else. I always stated to him distinctly that I claimed it under my contract, but that as I must have the tar to enable me to fulfil my contracts, I had to get the best terms I could.

At 12 o'clock noon adjourned until Friday next, the 5th inst, at 10 o'clock a. m.

EDM. F. FROWN,
Examiner in Chancery.

FRIDAY, 5 *May*, 1865.

Met pursuant to adjournment, the witness continues:

I have a letter from Mr. Brown, the secretary of the company, dated January 2, 1865, which I received immediately after the notice that they would not deliver me any more tar under the contract; this letter I now produce, marked Exhibit C.

Exhibit C.

OFFICE GAS-LIGHT CO.,
41 *Washington, Jan'y* 2, 1865.

C. Hart Smith, esquire, Baltimore, Md.:

DEAR SIR: I am now directed by our president to inform you that we have a bid for all our gas tar, from an old and very responsible firm, of six cents per gallon, to be paid for monthly; if they succeed in getting the contract, a branch of the business will be established here immediately. But in view of all the circumstances, he is willing to let you have it at five cents per gallon for the year 1865, being equal to $2,000 in the quantity of tar likely to be made in that period.

Please reply at your earliest convenience, as the party referred to is expecting an answer without delay.

I am, &c.,

J. F. BROWN,
Secretary in Charge.

I desire to make an explanation in regard to the discrepancy in my testimony as to the time in which I received no tar from the
42 company. In the bill I stated that I received no tar for fourteen days. That statement was made from memory, not having the papers with me, and I had confounded the dates; but the time as stated in my testimony is correct; I received no tar for thirty-one days.

Cross-examination by J. C. Kennedy, esq, solicitor for the defendants:

The contract for purchase from Wilson was made here in Washington, on or about the 24th of November, 1864, and I was present in person. The conversation was closed on that day at Mr. Wilson's house on K street, west of the circle. The purchase-money was to be paid $2,000 down, the balance in notes which I gave him, payable in 6, 12, 24, and 30 months. The whole purchase-money was settled to the satisfaction of myself and Mr. Wilson, on the first day of December following, and the notes were passed on that day. In making up the amount of $14,250, I considered that $12,000 was for the buildings, machinery, and other property, including the
43 good will and his retiring from the business, and $2,250 for the tar contract.

During our negotiation, and before our bargain of 24th November was made, I had seen the contract with the gas co., and read it and understood it. When negotiating for the purchase, Mr. Wilson, in

addition to the contract referred to, showed me receipts given from time by the gas company. The last receipt shown me at that time was dated June 2d, 1864, or at any rate after the expiration of the first five years of the contract.

The receipt book is here exhibited by the witness, and he states that this is the receipt just referred to which reads as follows:

Rec'd Washington. D. C., June 2, 1864, of H. C. Wilson, two hundred and fifty dollars in full for all the tar made at our works for six months due and payable this date.

(Signed) J. F. BROWN,
Sec. in Charge.

$250.

(It is admitted that the signature to the above receipt is genuine.
E. F. B., *Examiner.*)

44 I did not call upon the gas company at any time pending these negotiations to inquire whether the contract, a copy of which is filed, marked Exhibit A, had been renewed or was then existing as a subsisting contract.

1st x-interrogatory. You have said in your examination-in-chief that you took possession of the property, which you allege yourself to have purchased from Mr. Wilson, on or about the 1st of December, 1864, and on your cross-examination, you have said that you made or satisfactorily settled the cash payments, and passed your notes for the deferred payments on that day. Now, in view of these facts, to which you have so testified, state, if you please, what you meant, when you further said, on your examination in-chief, that your said purchase from Mr. Wilson was not to be consummated until he showed you evidence that the contract with the gas company, which he had undertaken to assign to you, was then a still subsisting and binding contract between said Wilson and said company?

45 Answer. I was anxious to get Mr. Wilson out of the business, for he was interfering with my trade in Baltimore very much, and therefore hurried him up to close the trade before he was really quite ready to do so; and tho' he deeded the property to me on the day mentioned, and I passed my notes, he gave me a guarantee in writing that the tar contract was in force, and should be assigned to me as soon as he could have a settlement with the company. This guaranty was given up to him by me on the day on which he assigned the tar contract to me, which was December 21st.

(All of this answer relating to the guarantee, objected to by counsel for defendants.)

2d x-interrogatory. What description of evidence did you then require him thereafter to show you to prove the then existence of the aforesaid contract?

Answer. There was no talk made as to the description of evidence at all. I calculated that I was able to judge of any papers he might produce, as to whether they were satisfactory evidence or not.

3d x-interrogatory. You have said that at that time Mr.
46 Wilson represented to you that the said contract was then in existence and continuing, and that you reposed full faith in his said representations. Why then was it, please state, that you then required him thereafter to show you evidence that said contract between himself and said gas company still continued?

Answer. Because I had invested my money in his buildings and business, which would be of no earthly use to me without the tar contract, and therefore could not feel perfectly easy until he assigned said contract to me.

4th x-interrogatory. State, if you please, if the reason assigned by you, in answer to the last cross-interrogatory, is the only reason that induced you to require him to furnish you with the further evidence as aforesaid.

Answer. I had no other reason, except that I thought he ought to produce among the receipts the receipt for the payment due at that time.

5th x-interrogatory. Did you not know, or had you not been credibly informed, or had you not some reason to believe, at the
47 time when you required him to produce further evidence as aforesaid, that the gas company had refused, at or before the expiration of the said contract, to renew the same?

Answer. On the contrary, I was distinctly told by Mr. Wilson that they had never refused to deliver it to him on the contract, and that they had been delivering it to him for the past six months the same as they had previous to that.

6th x-interrogation. Had you not received from some other person contrary information to that given by Mr. Wilson, from the gas company, or from some agent of the gas company?

Answer. I had not.

7th x-interrogation. State, if you please, whether, on the 20th of November, 1864, or on any intervening day between that and the 21st of December, 1864, you notified the gas company that you had obtained an assignment of the contract previously made between it and Mr. Wilson.

Answer. I did not. The first communication I ever had with any of the company about the contract, was with the secretary of the company, Mr. Brown, at his office, on the 27th of December, 1864.

48 8th x-interrogatory. State now, if you please, if you did not make a new contract with the gas company for tar on the 26th of Jan'y, 1865; and if so, what were its terms, and whether from that day to this you have not been receiving tar from said company, in accordance with the terms of said last-mentioned contract?

Answer. Mr. Bartol, the president of the company, offered me the tar for $50 per week. As I was obliged to have the tar to fill my contracts, I accepted that offer, considering it was the best trade I could make with them. He reserved the right to terminate that arrangement, by giving me a month's notice, which notice was contained in a letter which I now present, marked Exhibit D.

Exhibit D.

PHILADELPHIA, *March* 20, '65.

C. Hart Smith, esq.:

DEAR SIR: Please take notice that the temporary arrangement for tar will cease with the last weekly delivery in April.

Yours truly,

B. H. BARTOL,
Pres't of Gas Co., Washington, D. C.

49 Should you wish to obtain the tar for the future, please make a proposition.

Exhibit D.

E. F. B., *Exam'r.*

The time mentioned in the notice being up the last Thursday in April, they refused to deliver it after that time. As I stated in my examination-in-chief, this trade was made with the understanding that it was not to affect any rights that I might have under the contract.

All the tar that I have received from the 24th January to the present time has been under that arrangement, and to be paid for by me at the rate of $50 per week.

9th x-interrogatory. How much gas tar is necessary to manufacture a barrel of pitch?

Answer. Forty gallons.

10th x-interrogatory. Independently of special contract, what was the market value of gas tar per gallon from 24th December to 24th January last?

Answer. Four cents per gallon. During the time above mentioned, the cost of gas tar was worth, under the contract, one cent per gallon.

50 Direct examination resumed:

1st interrogatory. In your estimate of damages given in your examination-in-chief, did you calculate it upon the basis of the market value of gas tar, stated by you in your cross-examination to be four cents, or upon the basis of one cent, the price according to the stipulations in the contract?

Answer. I based my calculations upon the market price of the tar, four cents per gallon. Had I based it upon the calculation of one cent per gallon, the cost of the tar according to the original contract, it would have increased the damage during the 31 days I was without tar $750.

2d interrogatory. Upon the basis of the contract price of one cent per gallon, and the price that you paid for the tar under the temporary agreement with the company, how much more have you paid for the tar received under that agreement than you would have been required to pay for the amount so received if delivered under the original contract?

Answer. Four hundred and twenty-five dollars more up to last Thursday.

51 3d interrogatory. Did you reply to the letter which you this day filed in this case, marked Exhibit C? and if so, produce the original reply or a copy of the same.

Answer. I did reply, and now present a true copy of the same, marked Exhibit E.

(Copy.)

Exhibit E.

BALTIMORE, *January* 4, '65.

J. F. Brown, esq., secretary Wash. Gas-light Co.:

DEAR SIR: Yours of 2d inst. is received, and in reply would say that I must respectfully decline your offer for the tar, as it belongs to me now, as per contract, at a much less price.

Yours, &c.,

C. HART SMITH,
111 *Smith's Wharf.*

Exhibit E.

E. F. B., *Examiner.*

C. HART SMITH.

Sworn to and subscribed this 5th day of May, 1865, before me.

EDM. F. BROWN,
Examiner in Chancery.

52 At 2 p. m. adjourned to Tuesday, 9th inst., at 10 a. m.

EDM. F. BROWN,
Exam'r in Chancery.

TUESDAY 9*th May*, 1865.

Met pursuant to adjournment.

Henry C. Wilson, being duly sworn, doth depose and say, in answer to interrogatories by R. T. Merrick, esq., solicitor for complainant, as follows:

I am the H. C. Wilson who belonged to the firm of H. C. Wilson & Company, to which was assigned the contract made by Charles Wilson with the gas company, and which contract was afterwards assigned by said firm to me individually, and which I, on the 21st of December, 1864, assigned to C. Hart Smith. A copy of the contract, with the assignments thereon, is now shown to me, and marked Exhibit A, to the complainant's bill. I have examined them and find them to be correct. The contract was made in duplicate, and the gas company had one of them.

The contract was assigned immediately after it was made, to the firm of H. C. Wilson & Company, and, as a member of the

53 firm, I commenced to receive the tar about that time, and continued to receive it until on or about the 1st day of December, 1864.

1st interrogatory. State whether or not you received the tar from the company, under this particular contract, from June to December, 1864, and paid for the same according to the terms of the contract and in obedience thereto?

Answer. I did.

2d interrogatory. Why did you cease to receive it after the 1st of December, 1864?

Answer. Because I delivered up possession of the establishment on that day to C. Hart Smith.

3d interrogatory. State whether or not, at the time you so delivered possession to Mr. Smith, you gave him any guarantee for the assignment of that contract; and if so, where is the guarantee; and if it is lost or destroyed, state what it contained, and also why you did not at that particular time transfer the contract?

Answer. I did at that time give a guarantee to Mr. Smith to transfer the contract, as soon as I had a settlement with the com-
54 pany for the six months tar then due. The reason why I had had no settlement with the company was, that I was very much embarrassed at that time, having had two serious fires within about six months, which destroyed some very expensive machinery for me, and I had not the cash at that time to pay the amount. After I had had the settlement with the company, I then transferred the contract and received back the guarantee. The guarantee I have mislaid, and altho' I have searched for it I have not been able to find it. It was a guarantee to transfer the contract.

4th interrogatory. State whether or not you had a lease of the premises upon which your manufactory was situated, and whether or not the paper now shown you, marked Exhibit A, E. F. B., exam'r, is a correct copy of said lease, and whether the term of said lease and the covenant of renewal were made so as to conform to the contract marked Exhibit A to the bill, and whether or not you renewed said lease after the expiration of the first term; and if so, why?

Answer. I had a lease of the premises, and the paper now
55 shown me marked Exhibit A, E. F. B., exam'r, is a correct copy of said lease, and the term and covenant of renewal in said lease were so made in order to conform to the contract referred to. I did renew said lease after the expiration of the first term, because one was of no use without the other, as they were made simultaneously, and as I considered the gas tar contract renewed. I so renewed the other.

Cross-examination by W. B. Webb, esq., solicitor for defendants:

1st x-interrogatory. You say you commenced to receive the tar as a member of the firm of H. C. Wilson & Company, and continued to receive it from the time of the assignment by Charles Wilson, until December 1, 1864; were you the active partner of that firm, or what were your duties in connection therewith?

Answer. I was the active member of that firm, having all the

knowledge of the business. In April, 1861, I purchased Charles Wilson's right, title, and interest as a member of the firm,
56 and became the sole owner. From that time until the first of December, 1864, I received the tar in my individual right.

2d x-interrogatory. Did you make the payments for the tar?

Answer. Some I did, and some I did not. The most of them were made either by Charles Wilson or myself.

3d x-interrogatory. After you bought Charles Wilson out, who made the payments?

Answer. Charles Wilson was employed about my office, and he made some of the payments, and some were made by my brother, who was my clerk; and some by myself.

4th x-interrogatory. To whom were the payments made?

Answer. Some to George W. Riggs, president of the company; some to Joseph F. Brown, secretary of the company; and some to A. G. Hall, the present cashier of the company.

5th x-interrogatory. Was there any particular form of receipt, or was that a matter that varied from time to time?

57 Answer. It was varied according to the party that wrote them; there was no particular form agreed upon, that I recollect.

6th x-interrogatory. Do you know who made the last payment?

Answer. Yes, sir; Charles Wilson, acting for me.

7th x-interrogatory. Was there ever at any time a formal renewal of the gas-tar contract?

Answer. There never was a formal renewal, because I considered it virtually renewed, by its own terms, and because I had received no notice to the contrary.

8th x-interrogatory. Did you ever say anything to the president or any other officer of the company about renewing the contract?

Answer. To the best of my recollection, no.

9th x-interrogatory. During the time that you had the contract, was there or not any increase in the demand for the product of the manufacture of gas tar?

Answer. There was, at times, and like every other business, fluctuating.

58 10th x-interrogatory. Is the business as good now as when you carried it on?

Answer. It is not.

11th x-interrogatory. Did you find the business a lucrative one, as a general thing?

Answer. I made something more than my living at it, but not much.

H. C. WILSON.

Sworn to and subscribed before me, this 9th day of May, 1865.

EDM'D F. BROWN,
Examiner in Chancery.

Adjourned until to-morrow at 10 a m.

EDM'D F. BROWN,
Exam'r in Chancery.

59 *Testimony for the defendants.*

WEDNESDAY, 10*th May*, 1865.

The counsel for the complainant having declared the testimony on his side closed for the present, this day was agreed upon for taking testimony for defendants.

Mr. Webb, of counsel for the defendants appeared, and stated that the witness he desired to have examined to-day could not attend, and at his request, further proceedings are adjourned until to-morrow, at 10 a. m.

EDM. F. BROWN,
Examiner in Chancery.

THURSDAY, 11*th May*. 1865.

Met at 10 a. m., pursuant to adjournment.

The counsel on both sides, and the plaintiff, appeared, and waited until 11 o'clock, and the witness having failed to appear—

Adjourned until to-morrow, at 10 a. m.

EDM. F. BROWN,
Examiner in Chancery.

FRIDAY, 12*th May*, 1865.

Met pursuant to adjournment.

Albert G. Hall, a witness for defendants, being duly sworn,
60 doth depose and say, in answer to interrogatories proposed by W. B. Webb, esq'r., as follows:

I have been connected with the Washington Gas Company for 7 or 8 years past, and have been cashier of said company for the last four years, about. My duties as cashier, are, making out bills, receiving the money due on gas bills, &c.

[The witness is shown the original receipt, of which Exhibit B to the bill is a copy, and says]—

The signature to said receipt is mine. The body of the receipt is in the handwriting of Charles Wilson. I saw him write it in the office of the gas-light company. I was backward and forward from the window to the counter while he was writing it. I did not examine the receipt particularly; I only noticed the amount.

1st interrogatory. Were you, or were you not, in the habit of receiving the money for the tar?

(Objected to by Mr. Merrick.)

Answer. I was not. I don't recollect ever having receipted for the tar before. It was generally paid to Mr. Brown. I knew
61 nothing about the terms of the contract with Mr. Wilson. I knew Mr. Wilson got the tar. Mr. Henry C. Wilson used to come in there, from time to time, and say, "Now, old fellow, I want you to do all you can to help me get the tar; I must have it, if I don't I am ruined," or words to that effect. He said if he got it at the price, he did not expect to make anything; but he did not want

any one else to get it. He used to talk that way, and wanted me to use what influence I could with Mr. Brown, so that he could get the tar. I cannot remember the exact time that these conversations took place—about a year ago, I think.

Cross-examination by R. T. Merrick, esq., counsel for complainant:

1st x-interrogatory. Please to state, as near as you can, the time of the conversations you speak of.

Answer. As I said before, about a year ago; I cannot tell the exact month.

2d x-interrogatory. How many of these conversations took place?

Answer. I cannot recollect; 5 or 6 times, or 6 or 7 times;
62 he used to come down to see Mr. Brown, and when he was not in, he would sit and chat awhile.

3d x-interrogatory. State whether you know anything whatever in regard to the terms of the contract under which Wilson was receiving the tar.

Answer. I did not know anything about it.

4th x-interrogatory. Nothing was then said in these conversations with regard to the contract?

Answer. He wanted a new contract, and he would pay what any one else would pay, but he wanted the privilege of having it.

5th x-interrogatory. Was your influence then to be exerted with Mr. Brown to get the tar for him only upon his paying as much for it as anybody else was willing to pay?

Answer. My influence was in this way: I knew Mr. Harry Wilson very well, and I was to speak to Mr. Brown, and say I hoped he would give it to Mr. Wilson if he could, as he was a good fellow.

6th x-interrogatory. If Mr. Wilson wanted to get the contract upon the terms of paying as much as anybody else would pay, why
63 did he need any person to help him in the competition?

Answer. Well, I don't know, only I suppose he would like to know what other parties were offering, if I could find out.

7th x-interrogatory. Then what he wanted you to do was to find out whether any other parties had offered to buy, and if so, upon what terms?

Answer. Well, he said several times he wished I could find out what other parties had offered, and that he was willing to give as high as anybody else; that he had made money and could afford it; but even if he lost by it he wanted to have it.

8th x-interrogatory. Did you find out and tell him?

Answer. No, sir.

9th x-interrogatory. Why did you not?

Answer. I don't know that I ever asked the direct question what anybody offered. Always when I spoke to Mr. Brown about it, I simply asked him to do all he could for Harry, as he was a good friend of ours.

64 10th x-interrogatory. Did Mr. Wilson, in these conversations that you have referred to, offer to do anything, either for you or Mr. Brown, in consideration of your influence, or Brown's letting him have the tar?

Answer. He never offered any consideration, nor that he would do anything for me or Mr. Brown.

11th x-interrogatory. Did he ever claim that he was entitled to receive the tar under his contract?

Answer. No, I don't remember that he ever did.

12th x-interrogatory. Did he have any of these conversations with you later than a year ago from this time?

Answer. I don't remember as to the time, as I said before. I believe it was about a year ago; it might have been a month or two more or less; I don't recollect.

13th x-interrogatory. You have stated, in your examination in chief, that your duty as cashier was making out bills, receiving money due on gas bills, &c.; state whether or not it was your duty to make out all bills due the gas company.

65 Answer. I don't make out all bills, the clerks make out some of them.

14th x-interrogatory. Are the clerks spoken of in your last answer clerks in the cashier's department and under his control?

Answer. Not wholly under my control.

15th x-interrogatory. Did you ever make out any bill against Mr. Wilson for the tar, or any one else for the gas tar delivered?

Answer. No, sir; I don't remember that I ever did.

16th x-interrogatory. In Mr. Brown's absence, was it not your duty as an officer of the company to give receipts to parties making payments?

Answer. I always have for all bills that ever I received except some government bills, which were signed by Mr. Brown. The other clerks sign the bills when they receive the money.

A. G. HALL.

Sworn to and subscribed before me, this 12th day of May, 1865.

EDM. F. BROWN,
Examiner in Chancery.

At 12½ o'clock adjourned until Monday next, 15th inst., at 10 a. m

EDM. F. BROWN,
Examiner in Chancery.

66 MONDAY, 15*th May*, 1865.

Met pursuant to adjournment.

(Mr. Merrick, counsel for complainant, objects to the testimony given by Mr. Hall on Saturday last.)

Joseph F. Brown, being duly sworn, doth depose and say, in answer to interrogatories by J. C. Kennedy, esq., as follows:

My name is Joseph F. Brown; my age is 45 years on the 7th of this month, and I reside, and have resided for nearly 22 years past, in the city of Washington.

I have been connected with the Washington Gas-light Company,

in one capacity or another, since its organization, in July, 1848. From December, 1857, to March, 1865, I was the secretary-in-charge of the company, and as such, was charged with the entire affairs of the company, subject to the general control of the board of directors. I am now, and have been since March last, the secretary and treasurer only, the company having appointed an engineer.

I now present a printed copy of the charter and by-laws of the company, which I know to be accurate, having made a critical examination thereof myself.

67 (The printed copy is hereunto annexed, marked Exhibit F, E. F. B. exam'r.)

I have known the claimant, Mr. Smith, since December last, a day or two after Christmas. I have known Mr. Charles Wilson, a witness in this case in behalf of complainant, for nearly ten years; and I have known Mr. Henry C. Wilson, another witness in the same behalf, for about six years.

1st interrogatory. Look at the paper now shown you, marked Exhibit A to the bill, which is admitted to be a correct copy of the contract between Charles Wilson and the gas company, and say whether Charles Wilson, or any one else claiming to be an assignee of Charles Wilson, applied to the company for a renewal of that contract at any time before the period limited by the terms thereof for its expiration.

Answer. No one ever applied to the company specifically for a renewal of the contract. Henry C. Wilson was informed by me, as far back as the month of February, 1864, that under no circumstances would that contract be renewed. I so informed him by direction of Mr. Riggs, the president of the company, and a majority of

68 the board of directors. I was directed by the president to write letters to various parties throughout the country who were engaged in the tar business, asking that they should submit propositions for the purchase of this tar after the expiration of Mr. Wilson's contract, which would expire on the first day of June, 1864. In obedience to that order I wrote the letters to all the persons that I could learn were engaged in the business, among others, to Mr. C. Hart Smith, of Baltimore, the complainant in this cause, whose card I had received from the engineer of the Baltimore Gas-light Company. I wrote to Mr. Smith more than once, being anxious that he should put in a bid, as he resided in Baltimore, so near to Washington. Those letters were written either in April or early in May, certainly before the expiration of Wilson's contract, a copy of which is filed in this case.

2d interrogatory. If you received any responses to either of those letters to Mr. Smith, please produce them if you have them, and if you have them not, state what has become of them.

Answer. I did not; my letters to him were addressed to him

69 at Baltimore, as indicated in his card, and put in the post office.

3d interrogatory. If you received responses to similar letters addressed to any other person or persons, please state from whom such responses were received, and produce them if you have them?

Answer. I received a response from the Warren Roofing Company of Boston or New York, making certain inquiries in relation to the probable amount of tar manufactured, the facilities for its removal, and the last day that propositions would be received; to which I replied, and the result of that correspondence was, the two propositions herewith submitted, one dated at New York, May 31st, by telegraph; and the other dated at Boston, May 30th, by mail; both of which were received on the 31st.

(These papers are hereunto annexed, marked Exhibits G and H, E. F. B., examiner.)

Exhibit G.

Dated New York, May 31, 1864.
Rec'd Washington, May 31st, 1864, o'clock, min. m.

To J. F. Brown, sec'y Wash. Gas-light Co.:

70 We will give sixty-five cents per ton of coal carbonized.

WARREN ROOFING CO.,
St. John St.

11 55, Exhibit G.

E. F. B., *Examiner.*

Exhibit H.

BOSTON, *May* 30, 1864.

J. F. Brown, esq., sec'y Washington Gas-light Co.:

DEAR SIR: We make you an offer of (65c.) sixty-five cents per ton of coal carbonized, for what coal tar you make for the year from June 1st, 1864, to June 1, 1865.

Yours, truly,

WARREN ROOFING COMPANY,
NATH'L MARTAN, *Treas.*

Exhibit H.

E. F. B., *Exam'r.*

(The evidence with regard to the correspondence with the Warren Roofing Company, and as to the contents of letters not produced, objected to.)

71 4th interrogatory. What caused you to doubt as to the location of the Warren company?

Answer. Because the telegram is dated from New York, and the letter from Boston, they being the same party. These are the only responses I received from those letters, except from Mr. Henry C. Wilson.

5th interrogatory: You have said that as early as February, 1864, you notified Mr. Henry C. Wilson, that under no circumstances would the contract with Mr. Charles Wilson be renewed? State, if you

please, why that notification was given to H. C. Wilson, instead of Charles Wilson?

Answer. Some time after the commencement of the war, (I cannot locate the time,) Mr. Charles Wilson came to my office and informed me that he had disposed of all his interest in the tar contract to H. C. Wilson, after which, H. C. Wilson received the tar and paid for it.

6th interrogatory. State, if you please, and fully, what Mr. H. C. Wilson did and said after you gave him the notification.

(Objected to by Mr. Merrick.)

72 Answer. He said then, and often in subsequent conversations, that he did not ask or expect the contract to be renewed, as the tar was now, and had been for years, worth much more to him than $500 per year; but that he must have the tar, and as he had made a good thing out of the contract he could afford to pay as much as any one else; and asked me to use my influence with the board of directors to see that he still got the tar. This was the substance of a dozen conversations or more, wherever we met, frequently in my office, frequently in the street, and at the council chamber, of which he was a member, I being an alderman.

7th interrogatory. State, if you please, whether at any time before the first of June, 1864, Mr. H. C. Wilson left with you a proposition in writing, to lay before the board of directors, for the purchase of gas tar from the said company by said Wilson after 1st of June, 1864; and also requested you in his behalf to submit the same to the board.

Answer. Mr. Wilson did leave such a proposition with me during the day of the 31st of May, and requested me to lay it before

73 the board at the next meeting. This is the proposition.

(The proposition is hereto annexed, marked Exhibit I, E. F. B., Exam'r.)

Exhibit I.—E. F. B., Exam'r.

WASHINGTON, *May* 31, '64.

Mr. J. F. Brown, sec. in charge Wash'n Gas-light Co.:

I propose to purchase the tar made at your works for one year at 65 cents per ton of coal carbonized.

Yours, respectfully,

H. C. WILSON.

Exhibit I.

E. F. B., *Examiner.*

8th interrogatory. State, if you please, whether this writing is wholly in the handwriting of H. C. Wilson, or whether any portion of it, either in words or figures, is in the handwriting of any other person?

Answer. The body of this proposition and the signature, I believe, to be in the handwriting of H. C. Wilson. The figures 65, are in my handwriting.

9th interrogatory. State for what reason, under what cir-
74 cumstances, and under what direction those figures were in your handwriting.

Answer. Mr. Wilson had said that there would be some high prices named by persons who were his enemies, particularly the Warren Roofing Company, who were determined to break him down, and get the contract at any price, even if the tar, as was the case at Williamsburg, was allowed to run into the river during the whole year; that he must have the tar, and rather than lose it, would pay the highest price named by any one. I did not regard this transaction as a secret one in the shape of sealed proposals, and therefore showed Mr. Wilson the telegram which I had then received. He stated that other propositions might come in before the close of the day, and he left his proposition in blank, requesting me to fill it in with the highest price that might be named, stating that 65 cents was more than he could afford to pay, and he hoped, that under all the circumstances, the board of directors would award him the contract at the Baltimore price, forty cents per ton of coal carbonized; but that he must have the tar, and he would trust to the liberality of the board of directors, when the company got relief from Congress to re-
75 duce the price to 40 cents, going back to the 1st of June, 1864, the expiration of his contract. I waited until the receipt of letters by the evening mail, when I got the letter from Boston, which I opened, and found to name the same price as the telegram which I had showed Mr. Wilson. I then, in obedience to his request, filled the blank in his proposition with 65 cents.

The next morning, Mr. Wilson called at my house, before breakfast, and inquired what other propositions had been received. I told him of the letter from Boston naming the same price as the telegram, and that I had filled in his proposition at that price, before leaving the office the day before. He said, "it is too much. I cannot make any money at that rate. I ought to have it at the Baltimore price; but I must stand it until your company gets relief from Congress. As this is the last day that I am entitled to tar under my contract, and your board of directors will not meet for some time, what is to become of the tar in the meantime?"

I answered that as his bid was as much as the others, I was satisfied the board would award him the contract, rather than to give it to a stranger at the same price, and that he could con-
76 tinue to receive the tar after this day, until the board should award the contract, when it could go back and cover the tar made after this day; in other words, it was understood that the new contract had been given to him from that day, although it had to go through the form of being approved by the board of directors. He said that was entirely satisfactory, and he would go on receiving the tar, and pay for it when required, at the rate of 65 cents per ton of coal carbonized, if the board required it. On the last day of June, 1864, the board of directors met. I submitted the three papers marked Exhibits G, H, and I, urging the board to award the contract to Mr. Wilson, as his bid was as high as the others.

This was done, and I notified Mr. Wilson, on the first day of July, accordingly. Here is a copy of my said notification.

(It is hereunto annexed, marked Exhibit K., E. F. B., exam'r.)

(Copy.)

Exhibit K.—E. F. B., Exam'r.

OFFICE OF THE WASHINGTON GAS-LIGHT COMPANY,
No. 483 *Tenth street west, Washington City, July* 1*st*, 1866.

H. C. Wilson, esq., Washington, D. C.:

77. SIR: I am instructed to inform you that the board of directors of this company have awarded you the contract for our tar for two years from June 1, 1864, at sixty-five cents for each ton of coal carbonized, payable monthly, conditioned only upon the closing of the gas works during that period.

Truly, &c.,

J. F. BROWN,
Sec. in charge.

Exhibit K.

E. F. B., *Examiner.*

That letter was put in the post office, and Mr. Wilson called a few days after, and thanked me for having procured him the contract, and said the price was too high, and I must try to get it down to the Baltimore rates. I called his attention to the award being for two years, when his bid was for but one. He said that made *made* no difference, for if he could stand it one year, he could stand it two, and he expected the board would give him relief long before the one year was out. I then asked him, if I should now return him the $500 required under the old contract, in the event of the
78 company refusing to renew it. He said, no, that can be credited on my account at our next settlement, to which I assented.

10th interrogatory. How long did Mr. Wilson continue to receive tar from the gas company under the award of which you have just spoken?

Answer. From the 1st of June, 1864, until about the 25th of December of that year.

11th interrogatory. Did you render to Mr. H. C. Wilson an account at any time for the gas tar received by him after the 1st of June, 1864?

Answer. I did, and now present a copy of said account.

(The account is hereunto annexed, marked Exhibit L, E. F. B., examiner.)

(Copy.)

Exhibit L.—E. F. B., Examiner.

OFFICE OF THE GAS-LIGHT CO.,
Dec. 24, 1864.

DEAR WILSON: I enclose the bills for tar, from June to December, 1864, and as we are very much in the want of money, I request that you will call down to the office without delay and pay the amount.

79 You will see the bills are made out at the prices in your proposal, (65 cents,) and which was accepted by my board, and you duly notified. Come soon.

Truly, &c.,

J. F. BROWN, *Sec'ty, &c.*

H. C. Wilson, esq., Washington, D. C.

1864. H. C. Wilson, esq., to Washington Gas-light Co. Dr.

Dec. 1. To gas tar from coal carbonized in June, 1864, 1,104 tons, at 65 c.		$717 60
To gas tar from coal carbonized in July, 1864, 925 tons, at 65 c.		601 25
To gas tar from coal carbonized in August, 1864, 944 tons, at 65 c.		613 60
To gas tar from coal carbonized in September, 1,230 tons, at 65 c		799 50
To gas tar from coal carbonized in October, 1,802 tons, at at 65 c		1,171 30
To gas tar from coal carbonized in November, 1,941 tons, at 65 c		1,261 65
		5,164 90
Cr. By am't to be returned	$500	
By am't paid Dec. 22, '66	250	
		750 00
Due Dec. 1, 1864		4,414 90

SMITH
vs.
THE WASHINGTON GAS-LIGHT CO.

It is agreed to take testimony in the above-written cause before Mr. Brown, examiner, on Friday, the 7th inst., at 11 o'clock.

BRENT & MERRICK,
For Compl't.
KENNEDY & WEBB,
For Def't.

80 12th interrogatory. State, if you please, why that first credit of $500 is carried into the account.

Answer. That was the drawback to be allowed under the old contract, if the company refused to renew it, according to the understanding with Mr. Wilson. The second credit, of $250, was the amount paid to the cashier, Mr. Hall, on the 21st of December.

Mr. Wilson, frequently after the award, urged me not to forget to have the price reduced to the Baltimore rates at the earliest moment. I told him that it was useless to bring the matter before the board until the company got relief from Congress, as we were losing money; the directors, however disposed, could not, in justice to the stockholders, reduce the price to 40 cents until Congress increased the rate of charge for gas; but, as we should make our application for relief the first week of Congress, and as I had a right to suppose we should get favorable action at once, I would, if he desired it, not render any bill for the tar until December, when I hoped the board would reduce the rate to 40 cents, and if they did, he could then settle for it at 40 cents from the 1st of June. This, he said,
81 was satisfactory. I make this explanation to show why I did not render the bills monthly, as required by the award. On the 23d of December, Mr. Hall mentioned to me that Mr. Wilson had paid to him $250 on account of tar; and I said, why $250? he owes $4,000 or $5,000. He answered, "I don't know. I signed the receipt for $250 that Mr. Charles Wilson brought or wrote." I then told him that he must immediately go and hunt up Mr. Charles Wilson, and get that receipt, and let me see what it was. He went, and was gone nearly, if not quite, all the remainder of the day, before he found him. I did not see him until the next morning (the 24th) at the office, when he told me that Mr. Charles Wilson had said that the old contract was renewed, and that this payment of $250 was for the six month's tar.

I immediately made out the account, a copy of which I have here presented, and directed the superintendent to stop the delivery of the tar.

The secretary or the president of the company was the proper person to receive the money for the gas tar, the president being treas-
82 urer at that time. It was no part of the cashier's duties to receive said moneys, or any other moneys, except for gas and service bills.

13th interrogation. State, if you please, how many gallons of gas tar would a ton of coal carbonized produce?

Answer. About ten, and the price per gallon, under the award to Wilson, would be 6½ cents per gallon.

At 2 o'c. p. m. adjourned until to-morrow, at 11. a. m.

EDM. F. BROWN,
Examiner in Chancery.

TUESDAY, 16*th May*, 1865.

Met pursuant to adjournment.

Mr. Brown, the witness, appeared.

Cross-examination by R. T. Merrick, esq., counsel for complainant:

1st x-interrogatory. State whether or not, as secretary of the company, you keep a letter-book, in which letters which you send are copied?

Answer. I do keep a letter-book, in which the most im-
83 portant letters are copied; not, however, one in ten that I have written.

2d x-interrogatory. State whether or not you have a copy of the letter which you state, in your examination-in-chief, you wrote to Mr. Smith, the complainant in the case, in the spring of 1864?

Answer. I have not. I did not record any of those letters, for the reason that I supposed they were only preliminary to the bids. That was the object of writing them.

3d x-interrogatory. You have stated that the cashier of the company was authorized to receipt the bills for the gas and service only. State what other bills, besides bills for gas and service, were due to the company.

Answer. We had no other bills regularly due us, except for the tar; but we were in the habit of furnishing other companies with supplies, such as coal retorts, fire-brick, particularly Alexandria and Georgetown, when they had run out, also old iron to founders. Those bills I always settled and receipted.

4 x-interrogatory. Did not all those bills spoken of in the last part of your preceding answer pass into the books kept in the cashier's office?

Answer. Yes; I was in the habit of receiving the money
84 sometimes entering it on the cashier's books, and sometimes giving it to the cashier to enter.

5th x-interrogatory. Under what rule or regulation was it that it became the cashier's duty to receive the money due for gas and service, and give receipts therefor?

Answer. By instructions from Mr. Silas H. Hill, who was the president of the company from 1851 to 1856, who remained very much of the time in the office himself, and settled all the bills except for gas and service.

6th x-interrogatory. Who succeeded Mr. Hill as president?

Answer. Geo. W. Riggs, in May, 1856, and remained president until Nov. 11, 1864, when his resignation was accepted.

7th x-interrogatory. Did he remain in the office as Mr. Hill had done, and give the same instructions to the cashier?

Answer. He did not; his acceptance of the presidency was upon condition that I should resign the chief clerkship in the Adjutant General's office, and take charge of the affairs of the company. There was nothing said upon the subject, but the same practice was
85 continued, and I attended to the same duties that Mr. Hill had formerly done.

8th x-interrogatory. Did the cashier ever give receipts for any other bills than those for gas and service?

Answer. Not to my knowledge at the time, nor with my consent.

9th x-interrogatory. Who did give receipts for such other bills in your absence?

Answer. No one was authorized to do so, excepting always the president.

10th x-interrogatory. Did the corporation fail to have any one at all at the office of the company authorized to receive money due to it in your absence?

Answer. Outside of gas and service bills there was no one at the office to receipt for them; such bills were very rare.

11th x-interrogatory. In what capacity did you receive money due on bills referred to? and did you have the authority by virtue of your office?

Answer. As secretary in charge I was responsible for everything to the president and directors.

12th x-interrogatory. State what you mean by secretary in
86 charge, and say whether that is an office provided for in the charter and by-laws of the company.

(Objected to by Mr. Webb.)

Answer. As secretary in charge I was responsible for the entire indoor and outdoor operations of the company, excepting the money, that was the treasurer's business; that office is not specifically provided for in the charter or by-laws. The charter to the best of my recollection names but one officer, the president, that gives to the board of directors the power to appoint other officers.

13th x-interrogatory. How then is the office of secretary in charge created and its duties defined?

Answer. It was created and abolished by order of the board of directors. It is now abolished.

(Mr. Merrick gives notice to the counsel for the gas company to bring the record of the proceedings of the board of directors by which the office was created and abolished into court, and Mr. Webb accepts the notice, and will bring the book, if it can be procured.)

14th x interrogatory. State whether or not the secretary in charge or the secretary gave any bond conditioned for the performance
87 of any specified duties?

(Objected to by Mr. Webb.)

Answer. He did not.

15th x-interrogatory. State whether any of the officers of the company were required to give bond, and if so, which?

(Objected to by Mr. Webb.)

Answer. None but the president; he was the treasurer.

16th x-interrogatory. Did not the cashier give bond?

Answer. No, sir; not until I became the treasurer.

(Objected to.)

17 x-interrogation. When did you become treasurer?

Answer. In March, 1865.

18 x-interrogatory. By what authority was he at that time required to give bond?

(Objected to.)

Answer. By my order. I was under bonds; he received the money, and of course I was going to have somebody between me and trouble.

19th x-interrogatory. State whether or not there was any change made in the cashier's duties after you became treasurer from what they had been before?

(Objected to.)

Answer. None.

20th x-interrogatory. Look at the paper now shown you, and state what it is, and whose signature is attached thereto, if you know it?

88 Answer. It seems to be a receipt for $250, on account of tar delivered to H. C. Wilson, and bears date December 1st, 1863, and I believe the signature to be that of A. G. Hall.

21st x-interrogatory. Did you not, at some time before the month of February, 1864, tell H. C. Wilson that his contract with the gas company was the same as for ten years, or would certainly be renewed at the expiration of the first five, or you thought so, or something to that effect?

Answer. Never; I never thought so, therefore never could have told him so.

22d x-interrogatory. Look at the paper now shown to you and state what it is, and whether the same bears your signature?

Answer. It is a receipt dated June 2, 1864, for $250, for tar delivered to H. C. Wilson, during the last six months of his contract, and the signature is mine. Contract expired on 1st day of June, 1866, and he paid for it on the 2d.

23d x-interrogatory. State whether or not, at the time Wilson paid that $250, and you gave him this receipt, he owed the gas company anything.

Answer. He did not.

24th x-interrogatory. If he did not owe it why did he

89 pay it?

Answer. I meant that after he paid the $250 he did not owe the company anything.

25th x-interrogatory. Did he owe the company the $250?

Answer. He did; being for the tar for the preceding six months, which was payable semi-annually.

26th x-interrogatory. If the contract expired on the first day of June, and was not renewed, did not the gas company owe Wilson $250, the amount paid at the expiration of the preceding half year, instead of Wilson owing the gas company $250 for the half year expiring on the first of June?

Answer. They did, and it was allowed by a mutual understanding between Wilson and myself, to stand over, and be credited in the first settlement for tar under the new award.

27th x-interrogatory. What was to stand over, the $250 paid in December, 1863, or the $250 paid 2d June, 1864, or both?

Answer. Neither, because they were both voluntarily paid by

Mr. Wilson; but the $500, which was the drawback named in
90 the contract of 1859 to be paid Wilson by the company, in the event of its refusal to renew that contract.

28th x-interrogatory. When was this arrangement with regard to the drawback made?

Answer. It was spoken of frequently during the month of May, and finally understood between us on the first of June, to the best of my recollection.

29th x-interrogatory. If the agreement that the drawback should stand over and be credited in the first settlement for tar under the new award, as stated in your answer to the 26th x-interrogatory, was made on the first day of June, as stated in your last answer, why was it that in the last of June or first of July, 1864, you offered to return him the said $500 of drawback, as stated in your examination-in-chief in your answer to the 9th interrogatory?

Answer. Because up to that time there had been a mere understanding between Mr. Wilson and myself in relation to the tar after the expiration of the contract, and now that the same had been formally awarded to him at a price, which he said would not be remunerative, I felt it my duty, notwithstanding our previous arrangements. to tender to him the $500.

91 30th x-interrogatory. If this arrangement with regard to the drawback was talked of between you and Wilson frequently during the month of May, and made on the first day of June, why did you, in detailing the conversations between you and Wilson, testified to in your examination-in-chief, omit to mention so important a circumstance and make no reference to it until detailing the conversation which took place between you and him in the month of July?

Answer. It was no more made on the 1st of June than at any time previous during the month of May, and I supposed in my examination-in-chief I had mentioned this arrangement previously. If I did not, it was because it escaped my recollection, or that no interrogatory drew my attention to it.

31st x-interrogatory. Were you not asked on your examination-in-chief, to state everything that passed between you and Mr. Wilson with regard to the contract in question in this case; and did you not, in reply, give a narrative account of what had passed and which purported to be everything that did pass between you and him in that regard from, say February, 1864, to July, 1864?

92 Answer. I stated in reply to the interrogatory everything in relation to the tar matter that I then remembered; and if I did not mention the arrangement in regard to the drawback, it was for the reason above given.

32d x-interrogatory. Did you not state to C. Hart Smith, in the latter part of December, 1864, or early in January, 1865, that the reason why the payments had not been made monthly, by Wilson during 1864, from June down, according to the terms of the new award introduced into your testimony, was that when Wilson was called upon to make them he pleaded poverty from month to month and begged that he might be allowed to pay every six months?

Answer. Never, to the best of my recollection; I could not have such remarks, because they were in violation of the understanding between Wilson and myself.

33d x-interrogatory. What was that understanding?

Answer. That there was to be no bill rendered until the meeting of Congress, when it was believed the company was to get relief, and Wilson and I expected the price would then be reduced to the Baltimore rates, going back to the first of June.

93 34th x-interrogatory. According to this understanding then, was the bill to be rendered at the time Congress met? and if not at that time, was it to be put off until Congress adjourned, provided the petition of the gas company was not acted upon?

Answer. There was no understanding beyond the time when Congress was to assemble, but as the object of the postponement was that relief should be given to the company, I understood the arrangement to be that the bill should not be rendered until Congress had taken action upon the application.

35th x-interrogatory. Was the gas company losing money in 1864, and was it because of its losing so much that it required relief from Congress?

Answer. It could have had no other object in making the application, which was for an increase in the price of gas. The price then being fixed by the act of 1862, since which time the cost of all materials entering into the manufacture of gas had enormously increased.

36th x-interrogatory. State whether or not along in 1864
94 the company was in receipt of sufficient proceeds to pay its current expenses, or whether it was not running behind, and obliged to borrow, and did not comtemplate closing its works, because it could not manufacture gas at the price to which it was limited, and would not have done so except from fear of the seizure of the works by the authorities?

Answer. Exclusive of the expense of coal the receipts of the company met its expenses. The coal was purchased upon time; if it had been necessary to pay cash for the coal we would have run behind and had to borrow money; Mr. Riggs, the president, was in favor of closing the works after the adjournment of Congress, as much because of the injustice done to the company in withholding relief, as from the fact that we were not making money. The board of directors, however, did not take that view of the matter, and would not consent to the works being closed, believing that Congress, at its next session, would increase the price of gas, which it did.

37th x-interrogatory. Upon what time was the coal purchased?
95 Answer. At four and six months from the date of delivery.

38th x-interrogatory. In this condition of the finances of the company, if Mr. Wilson was under an obligatory contract to pay them every month, as appears by the award you have offered, why, for what consideration, and by what authority did you undertake to give him the indulgence you have testified you did give him?

Answer. Our supply of coal purchased in 1863 carried the works

over till the middle of the summer of 1864, and I did not begin to receive the new coal until about the first of September, which, being purchased upon time as aforesaid, relieved the company from immediate embarrassment, and thus enabled me to indulge Mr. Wilson by withholding the bill. I did this with the approval of Mr. Riggs.

At 3 p. m. adjourned until to-morrow at 11 o'clock a. m.

EDM. F. BROWN,
Examiner in Chancery.

96 WEDNESDAY, 17*th May*, 1865.

Met pursuant to adjournment.

Cross-examination of J. F. Brown continued:

39th x-interrogatory. State whether or not you remarked to Mr. Smith, the complainant in this case, in any conversation you had with him, that you knew 65 cents was too much for Wilson to give for the tar, and was satisfied that the bid put in by the Warren Roofing Company was not bona fide, but was a bogus bid, intended only to force Wilson up on the price of tar, and thereby ruin his business, or anything to that effect?

Answer. I never did. I did say to Mr. Smith that I thought 65 cents was a high price for the tar, and that Mr. Wilson had stated to me, which I repeated to the board of directors, that the bid of the Warren Roofing Company was more than they could afford to pay, and was made with a view of getting the tar at any price, and thereby destroying his business.

40th x-interrogatory. Did you not state to Mr. Smith, the complainant in this case, that you had not refused to renew the contract with Mr. Wilson, and that it was not necessary to refuse to renew it?

97 Answer. I never made such a statement in my life. Mr. Wilson never asked to renew the contract, and if he had no officer or director of the company could for a moment have entertained it.

41st x-interrogatory. Did you not say to Mr. Smith that Mr. Bartol, the president of the company, had complained of you, because you had given Wilson a little time on his account, when he was not able to pay it?

Answer. I told Mr. Smith that Mr. Bartol had said to me, that that was not his way of doing business, and that the company had been more indulgent in this and other matters than it ought to have been, or ever should be again. I never said anything to Smith about Wilson not being able to pay, because he was able to pay.

42d x-interrogatory. State whether or not there was any meeting of the board of directors prior to June 1st, 1864, at which it was determined not to renew the contract with Wilson in this case?

Answer. There was no formal meeting of the board of directors, but I conversed with a majority, if not all, between the 1st of
98 February and the 1st of June, 1864, at various times and places, and was directed by them under no circumstances to

renew the contract, because I assured them that we could get much more for the tar, and that Wilson himself would now pay the Baltimore price, 40 cents per ton of coal carbonized. He told me he would.

43d x-interrogatory. At the time Mr. Wilson gave you that blank bid to which you have testified, was it not understood between you and Mr. Wilson, that the bid offered by the Warren Roofing Company was a bogus bid, and that his blank bid was only to be shown to them, the Warren Roofing Company, but never used as a real bid for any practical purpose?

Answer. There was no such understanding. The blank bid was a bona fide bid, to be filled in at the highest rate offered by any one, in order to secure him from the board of directors the award of the tar contract.

44th x-interrogatory. When was the bid filled in?

Answer. On the night of the 31st of May, 1864, after the letters received by the last mail had been delivered.

45th x-interrogatory. Was it not understood, as part of the
99 contract made with Mr. Wilson, on the award as you have testified, that the price specified in the award was to be reduced in the contingency of Congress giving relief to the company?

Answer. There was no such understanding or promise on the part of the board of directors at the time of the award; but I had assured Mr. Wilson that I would use my influence, in the contingency named, to persuade the board to reduce the price to the Baltimore rate.

JOSEPH F. BROWN.

Sworn to and subscribed before me this 17th day of May, 1865.

EDM. F. BROWN,
Examiner in Chancery.

At 12½ o'clock adjourned until Saturday next, the 20th inst., at 11 a. m.

EDM. F. BROWN,
Examiner in Chancery.

100 Saturday, 20th May, 1865, met pursuant to adjournment.

Samuel R. Brick, being duly affirmed, doth depose and say, in answer to interrogatories proposed by J. C. Kennedy, esq., solicitor for the defendants, as follows:

I am fifty-five years old; live in Philadelphia; and am a gas engineer by profession; and consulting engineer for several gas works, and president of the Richmond County Gas Company, Staten Island, New York.

I am acquainted with Mr. Henry C. Wilson, late of this city, and formerly of Philadelphia; have known him about seven years. He is the same Henry C. Wilson who was carrying the lamp-black factory

in this city in 1858 and 1859, and received the tar from the Washington Gas-light Company; I made his acquaintance in this city.

During the late Presidential canvass in 1864, in Philadelphia, previous to the 8th day of November, and I think between the 1st and the 8th of that month, there were several political demonstrations in the way of torch-light processions of both parties, that passed
101 my house. During one of those processions I was standing on my front door steps between 9 and 11 o'clock in the evening, and Mr. Henry C. Wilson came up on my steps and spoke to me, and introduced to me some gentleman whose name I do not now recollect. At first I did not recognize his face, although his voice was familiar to me. I had not seen him for several years. I made the remark that you young fellows have such a way of disguising yourselves with hair on your face that it is hard to recognize you in the dark. He then said: "I am Mr. Wilson, just from Washington." I then invited him and his friend to take social drink. He was viewing the procession as well as myself.

After some conversation of a general character, in my drawing room, where we had retired, I asked him if he was making any money now out of the war, as everybody else seemed to be making money; and he answered in the affirmative, that he had made a fortune out of the government in a year or two. I think he said he had made
$40,000 in the last year; but am not certain whether he said
102 one year or two years. I said I was very glad to hear it, as I had been loosing ever since the war broke out. I then asked him what he had been engaged in. He said, inasmuch as he had a monopoly of the tar at the Washington gas works; that he had the contract for putting on all the roofs for the various buildings for the government throughout the city. This conversation, advanced by himself, brought up the subject of the tar contract at the Washington gas works. He then said to me, that as his old contract had expired with said company, he was obliged to make a new one, and as those fellows in Boston were determined to monopolize the whole trade, and that he could give as much as they could, and if they could give 65 cents per ton for coal carbonized, that he could, although it run up to a pretty round sum in the aggregate; and that it would now, under his new contract, amount to some $12,000 or $14,000 per year, according to the number of tons used. He then said that he could stand it for a year or two, any how, and by that time maybe they would get tired of bidding against him, meaning the Warren Roofing
Company, of Boston. He also said that he believed that com-
103 pany would rather run it into the Potomac than that he should have it. His opinion was that their object was to monopolize all the trade through the country, and get their own price for the roofing. I then said to him that he was very lucky in getting it at that price, 65 cents per ton for coal carbonized. He said he should not have got it at that price, but Mr. Brown assisted him, being his friend, and wanted him to have it. He did not explain in what way Mr. Brown assisted him, nor did I ask him. I understood him to refer to Mr. Joseph F. Brown, the secretary of the gas company. He

said Jo. Brown. I then said: "Mr. Wilson, you pay less than what other companies are receiving for the tar; that I was receiving at my works what was equivalent to one dollar per ton of coal carbonized." He said he knew that; that the Warren men in Boston were paying 70 and 75 cents for tar to other companies nearer their place of business, and that it was further for them to ship it, and they could not afford to pay as much; and he supposed that they were going to concentrate it or boil it down, so as to ship it in a prepared state for roofing. There the matter in regard to that closed; and he
104 said he had a fine house in Washington, and was prepared to entertain company, and invited me to call and see him. He then bade me good night, and left to view the balance of the procession.

(This evidence is objected to by Mr. Merrick.)

1st interrogatory. If in the conversation with Mr. Wilson, to which you have just referred, he stated the price which the Warren Roofing Company, of Boston, had offered to the Washington Gas Company for gas tar, at or about the time of the expiration of Wilson's first contract with the said company, please state precisely what that price was.

Answer. I understood him to say that he was aware that they had offered 65 cents per ton of coal carbonized, and that he got the information through Jo. Brown.

2d interrogatory. State, if you please, whether in the same conversation, he expressly stated to you the price which, under his new contract with said company he was to pay for tar furnished under said contract? And if so, state that price.

Answer. He stated to me clearly and distinctly, unsolicited on my part, that it would cost him under his present contract with
105 the company, from $12,000 to $14,000 per year, and my impression is that he said he thought of putting up a factory, but I am not certain about that; my memory is not very distinct on that point, about the factory. He also said something about putting up a factory at Philadelphia with his father. And he also said something about the tar at the Philadelphia gas works, but I do not recollect what it was.

3d interrogatory. If there was any reason why you remember more distinctly one portion of his conversation on that occasion than another, please state it.

Answer. Why, he seemed to be down very hard on those Boston works for interfering with him in Washington, when they could get plenty of tar nearer home. He laid particular stress on that. He said he believed their object was to drive out all competition. I have no other reason than this for recollecting about one part of the conversation more than another, except that much of the conversation related to the Washington works, and very little about those at Philadelphia.

(All of the evidence of this witness, as to conversations held with Henry C. Wilson, in the fall of 1864, objected to.)

106 Cross-examination by R. T. Merrick, esq.:

1st x-interrogatory. State when you were summoned to appear here?

Answer. Yesterday, at 16 minutes past 4 p. m.

2d x-interrogatory. State by whom the summons was issued.

Answer. It was not a summons. It was a letter from Mr. Joseph F. Brown, secretary of the gas company, requesting me to come.

3d x-interrogatory. State when, and to whom, and under what circumstances you first mentioned the fact that Henry C. Wilson had had the conversation with you to which you have testified.

Answer. Some time ago the Washington Gas Company made the change and elected Mr. Bartol, of Philadelphia, president, with whom I am very intimnte. Mr. Bartol, in a casual conversation with me about the affairs of the company, said that some things had been done not in accordance with his views of the way they should be done, and loosely, and referred to this contract as one. Instead of having a written contract drawn in regular form, Mr. Brown had just
107 received Mr. Wilson's written proposal to do thus, and give thus and so, and that Mr. Wilson now denied ever making such a proposal, or purchasing the tar under that contract. I then said, that Mr. Wilson must be a very curious fellow, or something to that effect, inasmuch as he had said to me last November that he had made a contract of that kind with the Washington Gas-light Company, and I subsequently wrote to Mr. Brown of this conversation with Mr. Bartol.

4th x-interrogatory. What kind of contract do you mean by "that kind of contract," spoken of in your last answer?

Answer. I mean Mr. Wilson's contract in regard to the tar.

5th x-interrogatory. Did Mr. Bartol tell you anything about the terms of the proposal, spoken of in your answer to the 3d x-interrogatory?

Answer. I think, in the course of the conversation, he mentioned the sum, 65 cents per ton.

6th x-interrogatory. At what time was it you had the conversation with Mr. Bartol?

Answer. Since he was elected president of the company. I don't know the date. I find, on referring to my diary for this year, that it was January 9th, 1865.

108 7th x-interrogatory. Now refer to your diary, if you please, and state when it was you had the conversation with Mr. Wilson?

Answer. I cannot, for I never kept any diary until this year.

8th x-interrogatory. State precisely, if you can, the time of this conversation with Mr. Wilson.

Answer. It was somewhere between the 1st and the 8th day of November, 1864, I believe.

9th x-interrogatory. On what day of the week was it?

Answer. I do not know. It was one of those processions, and I think it was a democratic one, and the last one, I believe, before the election.

10th x-interrogatory. Who was present at that conversation?

Answer. No one but myself and Mr. Wilson, and the man whom he introduced, whose name I do not recollect.

11th x-interrogatory. What time did you write to Mr. Brown about the conversation with Mr. Bartol?

Answer. I cannot say whether it was one day or a week, but it was shortly after.

12th x-interrogatory. Why did you write to Mr. Brown?

109 Answer. I have a regular correspondence with Mr. Brown, and I took occasion to mention it in one of my letters. As consulting engineer, I have to write to him.

13th x-interrogatory. Were you intimate with Mr. Henry C. Wilson prior to November last?

Answer. Yes, sir. In 1858 and 1859 I was quite intimate with him, and visited him often here in Washington, and was visited by him here.

14th x-interrogatory. What kind of factory did he say to you, in that conversation, he contemplated building in Washington?

Answer. I understood him to say a factory for preparing tar for roofing in Washington.

SAM. R. BRICK.

Affirmed and subscribed before me, this 20th day of May, 1865.

EDM. F. BROWN,
Examiner in Chancery.

At 4 o'clock p. m. adjourned until Monday next, the 22d inst., at 1 p. m.

EDM. F. BROWN,
Examiner in Chancery.

110 MONDAY, *May 22d*, 1865.

Met pursuant to adjournment.

Owen O'Hare, being duly sworn, doth depose and say, in answer to interrogatories by W. B. Webb, esq., solicitor for the defendants, as follows:

1st interrogatory. State your name, residence, and occupation.

Answer. My name is Owen O'Hare. I reside in Washington city, and my occupation is that of a plumber and gasfitter.

2d int. Have you at any time been in the employment of the Washington Gas-light Company? and if so, when, and in what capacity?

Answer. Yes. I was superintendent of the Washington Gas-light Company for about fifteen years, up to the 6th of March last, when I resigned.

3d int. What were your duties as superintendent?

Answer. The management of works generally, the construction of of mains, and superintending the workmen.

4th int. Do you know the complainant in this suit, Charles Hart Smith?

Answer. I do.

111 5th int. Do you know Henry C. Wilson, a witness, who has testified in this case?

Answer. I do.

6th int. Did you ever see the complainant, Smith, and the witness, H. C. Wilson, or either of them, at the works of the Washington Gas-light Company?

Answer. I did. They were there sometimes separately, and sometimes together.

7th int. How often together?

Answer. Only once.

8th int. Can you fix the date at which they were at the works together?

Answer. About the middle of August last, as near as I can recollect. We were building an extension to the works, and from the progress made in the work, I should judge it was about the time I have mentioned.

9th int. State, as nearly as you can recollect, what passed at that time?

Answer. Mr. Wilson asked me the amount of coal we had carbonized the previous month. I told him I could not tell at that time; if he would call at the 10th street office any of the clerks would give it to him, if I was not there. That is the only thing that I know about it.

10th int. Did you, as the superintendent, have anything to do with the delivery of the tar made at the works?

112 Answer. I did not. Mr. Wilson hauled it away himself. I only notified him, sometimes when the tar had accumulated, to come and take it away.

(The statements with regard to conversations with Mr. Wilson objected to by Mr. Merrick.)

Cross-examination by R. T. Merrick, esq'r, counsel for complainant:

1st x-interrogatory. Have you stated all that passed?

Answer. Yes, sir; all on the subject of the tar.

2d x-int. What else was talked of?

Answer. I do not recollect, except that I showed them through the building, and we made remarks about it.

3d x-int. Did Mr. Smith join in the conversation about the tar?

Answer. No, sir. He stepped one side when Mr. Wilson talked about it. I don't know that he overheard the remarks.

4th x-int. State whether or not you have any interest in the gas company?

Answer. No, sir; I own no stock, and have no interest.

OWEN O'HARE.

113 Sworn to and subscribed before me, this 22d day of May, 1865.

EDM. F. BROWN,
Examiner in Chancery.

Adjourned until Friday next, the 26th inst., at 11 a. m.

EDW. F. BROWN,
Examiner in Chancery.

FRIDAY, 26*th May*, 1865.

William B. Webb, esq., of counsel for the defendants, appeared this morning pursuant to adjournment, and stated that the defence had closed their testimony for the present; that he believed the counsel for the defendant intended to take some rebutting testimony, and if it was so determined, they would agree upon a time and inform me of the same.

I therefore declare the further taking of testimony in this case adjourned without day.

EDM. F. BROWN,
Examiner in Chancery.

114 TUESDAY, 7*th July*, 1865.

In pursuance of the agreement hereunto annexed, met at 11 o'clock this morning, for the purpose of taking rebutting testimony for the complainant.

Henry C. Wilson recalled:

I know Mr. Samuel R. Brick, and have known him for the last seven or eight years.

Int. by Mr. Brent. What do you know about the said Brick being a stockholder in the Washington Gas-light Company?

(Objected to by Mr. Kennedy.)

Answer. Mr. Brick has told me that he was a stockholder in said company.

(Mr. Brent now reads so much of the deposition of the said Brick, taken before me on the 20th May, 1865, as relates to a conversation between the said Brick and this witness, at the house of the said Brick, and thereupon asks the following interrogatory.)

2d int. State if you had an interview with said Brick at his
115 house? and if so, when it was, and on what occasion?

Answer. I did have an interview with Mr. Brick on the steps of his house, not in his house, upon the occasion of a republican torch light procession in Philadelphia, just previous to the last presidential election.

Narative form resumed:

I am positive I did not go into his house; I have never been inside of his house in my life; nor did I, on that occasion, take a social drink with him. My brother, George W. Wilson, was the only person in my company at that time, and he remained with me.

I had no conversation whatever with Mr. Brick at that time, or any other time, on the subject of my coal tar contract, or any other business. I was merely passing along, and stopped and passed the compliments of the evening, and went on the steps and made some casual remarks about the procession. In a few moments I passed on down the street towards the procession, which did not pass his front door, so far as I observed. I am very positive I did not say any-
116 thing on the subject of my getting the tar contract at 65 cents, or in any other respect relating to business.

I state postively that during the month of February, 1864, or at any other time prior to the second of June, 1864, nor on that day, was I informed by Mr. Joseph F. Brown that under no circumstances would the contract which I then held as assignee of Charles Wilson, for gas tar, be renewed. He never informed me that he was inviting other bids for gas tar.

On or about the first of June, 1864, I think, I met him near the gas office. He showed me what purported to be a telegraphic despatch from Mr. Warren, president of the Warren Roofing Company, offering to take the gas tar at 65 cents per ton of coal carbonized. He appeared to be bothered about it, and said suppose I say that I never received this telegram, how will they (the Warren Roofing Company) prove that I ever received it. I said they could probably prove it by the record of the telegraphic office that it was delivered here. He said he would think the matter over, that he intended I should have the tar, that they had never had any
117 trouble with me in taking away the tar, which was the main thing the company wanted. He then said, in case the Warren company should send or come on to look after the matter, suppose you give me a bid with the amount in blank, so that I can show them that I have other propositions, so as to get rid of them.

In consequence of that conversation, I gave the bid in blank for one year. Exhibit I, now shown me, is the proposition I submitted, and is in my hand writing, except the figures 65.

I never was called upon by Mr. Brown, or any officer of the company, to pay for the gas tar at the rate of 65 cents, prior to my assignment of my contract to Mr. C. Hart Smith.

(So much of this last answer as relates to his being called upon to pay at the rate of 65 cents objected to by Mr. Kennedy.)

On the 2d day of June, 1864, I paid the $250 to Mr. J. F. Brown, personally.

(Objected to by Mr. Kennedy.)

I do not recollect ever saying to Mr. Brown that high prices would be named by persons who were my enemies, particularly the Warren Roofing Company, who were determined to break me down
118 and get the contract at any price, even if the tar was allowed to run into the river during the whole year, and that I must have the tar, and rather than lose it, would pay the highest price that any one would.

I called the next day at Mr. Brown's house, and asked him if he had any news for me. He said no, that he was so much engaged with his municipal election affairs, in which he was a candidate, he could not attend to this business then; that I must let the matter rest a few days, and it would be all right. He did not tell me he had filled up the bid. I did not say to him that I would stand the 65 cents until his company could get relief from Congress, nor did I say I would pay for it when required at the rate of 65 cents per ton of coal carbonized.

Looking at Exhibit K, I cannot verify it to be a literal copy of the original letter which I received, and which, with another note writ-

ten at the same time by Mr. Brown to me, is now in the possession of Joseph H. Bradley, esq., as my counsel. Those papers were left at my house during my absence to New York, and were handed
119 to me on my return home. They were in an envelope, with no post office marks upon it. If I kept the envelope it is with the papers left with Mr. Bradley; if not there, it is lost.

(That part of the above relative to the envelope objected to by Mr. Kennedy.)

I believe the original of said exhibit K contained the words "payable monthly," but I have no distinct recollection of it.

No such conversation ever took place as is stated by Mr. Brown in his deposition to have taken place a few days after mailing his letter of 1st July, 1864, the said deposition having been read to me; nor did I have any conversation with Mr. Brown after receiving his note of 1st July upon the subject of the gas tar until after the assignment made by me to Mr. Smith.

I received the original, of which Exhibit L is a copy, and which original is in the hands of Mr. Bradley. Not one word ever passed between Mr. Brown and myself in regard to the $500 credited to me in said exhibit.

I have no interest whatever in the event of this cause.

120 Cross-examination by J. C. Kennedy, esq., of counsel for defendants:

At the time I saw Mr. Brick in Philadelphia I was there on a visit of pleasure. It was after supper, probably about nine o'clock in the evening.

I had not drank anything during that day up to that time in the evening.

My brother and myself were together only in the evening of that day.

Mr. Brick was then residing on Arch street, between 19th and 20th, on the north side.

It was on or about the 1st day of June that I met Mr. Brown, as I have stated, as well as I can recollect. That is my impression, but I am not certain. I have no way of fixing the day exactly. I think that conversation commenced on the pavement in front of the gas office on 10th street, and was continued in Mr. Brown's private office. There was no one present during that conversation.

I am positive in my recollection that the payment of $250
121 made on the second day of June, 1864, on account of the tar contract, was made by me to Mr. Brown personally. I am as positive of this as of any other fact to which I have testified. My brother wrote the receipt in the receipt book, and I took it down there.

H. C. WILSON.

Re-examination by Mr. Brent:

Int. Under what title or authority did you consider yourself as receiving the gas tar from the defendants after the 1st of June, 1864?

(Objected to by Mr. Kennedy.)

Answer. I consider myself as receiving the tar under a renewal of the contract.

(Answer objected to.)

H. C. WILSON.

Sworn to and subscribed before me, this 7th day of July, 1865.

EDM. F. BROWN,
Examiner in Chancery.

Adjourned to the 25th of August next, at 10 a. m.

EDM. F. BROWN,
Exam'r in Chancery.

122 FRIDAY, *25th August*, 1865.

Met pursuant to adjournment.

Present: Mr. Brent, for complainant; Mr. Kennedy, for defendant.

Geo. W. Wilson being duly sworn, doth depose and say as follows, in answer to interrogatories by Mr. Brent, counsel for complainant:

I am a resident of Washington city, but have been absent in Philadelphia since last September. I am about going to Savannah, Georgia.

I am a brother of H. C. Wilson, who has testified in this cause. I was with my said brother on the night of a republican torchlight procession in Philadelphia, in October last, and as we passed Mr. Brick's house, in Arch street, we stopped, and my brother introduced me to Mr. Brick. No conversation ensued, except passing the compliments of the evening. We did not remain there longer than be-
tween three and five minutes. I heard the whole conversa-
123 tion between my brother and Mr. Brick, as we were not separated. I am positive nothing was said in the course of that interview about gas tar, or any business matter, nor did my brother go inside the front door.

Cross-examination by Mr. Kennedy:

In October last I was living in 23d street, between Hamilton and Baring streets, West Philadelphia. I was not engaged in business at that time. I was living with my father. Between that time and this I have lived in New York, Trenton, Brooklyn, and Philadelphia. I have been in the army of the Potomac since March, 1865; was stationed at Elizabeth, N. J., and City Point, Virginia. I was not in the army previously to March last. I was discharged from the army on the 3d day of the present month. I was then at Trenton, N. J.

I last saw my brother, H. C. Wilson, on the 28 or 29 of July last. He did not then tell me that he should want me as a witness
124 in this case. I received a letter from him last Monday stating that I was a witness in a case of his, and he would like to see me. I was at Trenton, New Jersey, when I received that letter;

he was at a place called Dolington, in Bucks county, Penn. Since then I have not seen my brother, nor have I received a letter directly from him, but my father did, and he informed me what day I was to come down.

I left Philadelphia the next day after the torchlight procession of which I have spoken. I do not know how long my brother had been there previously; I met him there that night at my father's house; I saw my brother the first time on the evening of the torchlight procession, about six or seven o'clock, and we left our father's house between half-past seven and eight o'clock. We left together, and there was no other person with us. We walked down Bridge street, crossed the wire bridge, and continued on down Callowhill street to 21st street, down 21st street to Arch, and down Arch to Mr.
125 Brick's. Stopping there on the steps between three and five minutes, continuing Arch to Broad, down Broad to Chestnut, and stopped there to witness the procession passing, or forming. We stopped at no place on the way after leaving my father's house until we got to Mr. Brick's. I judge that route was fully a mile. We had not seen any part of the procession before we got to Mr. Brick's. We first saw it at Broad and Chestnut streets, after leaving Mr. Brick's. I cannot certainly when that procession marched, but it was marching when I saw it about 9 o'clock in the evening.

I had no previous acquaintance with Mr. Brick. I think I was dressed in black that evening, frock coat, black pants, and black velvet vest, and high black silk hat with crape round it. I did not at that time wear whiskers and have never worn them. I did not wear any moustache or goatee. I am in my 27th year.

Mr. Brick did not invite me nor my brother into his house on the evening referred to. I do not know that I ever saw Mr. Brick
126 after that. I see a gentleman here present who resembles him very much. Mr. Brick's house is, I think, a brown stone front, situated on the north side of Arch street near 19th. I saw no one there but Mr. Brick at the time my brother and I were there. I was introduced to Mr. Brick by name, as George W. Wilson, and I do not remember whether I was spoken of as a brother of H. C. Wilson. Mr. Brick was standing on his steps, on the second step from the bottom, I think. He was standing there when my brother and I came up to his house. I cannot say that he did not change his position while we were there, but know he did not go into his house. I do not remember how he was dressed, he had no hat on, I know he was gray, and think he was partly bald. His front door was standing open, his house was illuminated. He was not engaged in conversing with any body when we saw him. The procession was not passing his house. When I first saw the procession it was more than half a mile from Mr. Brick's house, and at the point where I
127 saw it, it could not have been seen from Mr. Brick's house. I cannot say what direction it was moving, I think it was countermarching. It was not marching in the direction of Mr. Brick's house.

I am acquainted with Mr. Smith, the complainant in this case. I

have not received any communication from him in regard to this case.

I have not received any communication in regard to this case except that of which I have spoken as having come from my brother and through my father. The reason of my appearance here is simply because of the request of my brother through my father. I am younger than my brother and have been in his employment as a clerk, in the business of manufacturing lamp-black in the city of Washington, from the latter part of 1862 to May, 1864. I cannot say what day of the month it was that I saw Mr. Brick in Philadelphia, but it was late in October. It was between 7 and half-past 8 in the evening. I am not positive whether it was moonlight or a dark night.

Re-examination by Mr. Smith:

128 I cannot say I am positive as to the time in the evening that I saw Mr. Brick.

GEORGE W. WILSON.

Sworn to and subscribed before, me this 25th day of August, 1865.

EDM. F. BROWN,
Examiner in Chancery.

Adjourned to Saturday, 21 October, at 12 noon.

EDM. F. BROWN,
Examiner in Chancery.

SATURDAY, 21 *October*, 1865.

Met pursuant to adjournment.

By consent of both parties, Mr. Webb for defendant, and Mr. Merrick for complainant, Mr. Brick is recalled and re-examined for the defendants at this time subject to all objections.

1st int. by Mr. Webb:

Were you present on the 25th of August, 1865, when George W. Wilson was examined in *in* this case?

Answer. I was.

2d int. Do you recognize him as the person who was with

129 Henry C. Wilson at your house on the night of the interview between you and Henry C. Wilson, about which you have testified?

Answer. I say most unequivocally and emphatically he was not the man.

3d int. Was the person who was with Henry C. Wilson on that night introduced to you by him as his brother?

Answer. No, sir. If he had been I should have remembered his name.

4th int. Do you remember what kind of a procession it was, whether democratic or republican, that was moving that night through the streets of Philadelphia?

Answer. I can answer that question now by saying it was the

McClellan democratic demonstration, a few days previous to the presidential election.

5th int. Was your residence illuminated on that occasion?

Answer. No, sir; it was closed up as dark as Egypt.

Mr. Wilson remarked when he came upon the step to me, after saluting me, that I did not take as much interest in this procession as I did in the one previous. I stated to him, no, I could not see it, or something to that effect, that I was all alone in the house, the family had closed up and gone out. At this juncture he called his friend up and introduced him, whose name I do not recollect, but of his personal appearance I have a vivid recollection, and might know the man again were I to see him again in the same dress.

6th int. Where were you when Mr. Wilson first addressed you?

Answer. I was sitting on the balustrade on the extreme top of my steps, which is elevated from 5 to 7½ feet above the curb.

7th int. Had the man who was introduced to you beard, or was he clean shaved?

Answer. His face was all covered up with beard, moustache, whiskers and all. He had on a black Kossuth hat and a sack coat. He was a man who would weigh from 150 to 160 pounds, was about five feet eight or nine inches high, and about thirty-five years of age.

8th int. Did you all three enter the house? and if so, how long did you remain there?

Answer. We did, and went up into the 2d story in my drawing-room, in the back part of the building. I turned on the gas-light, that we might see, and we remained there from 15 to 20 minutes, to the best of my recollection.

Cross-examination by R. T. Merrick, counsel for complainant:

1st x-int. Did you take a drink when you went up stairs?

Answer. We did.

2d x-int. Did you call the name of the man who was with Wilson at any time during the interview?

Answer. I did not to my recollection, inasmuch as I had no occasion to do so.

3d x-int. Did not you ask him to drink?

Answer. I did.

4th x-int. Did not you shake hands with him when he was introduced to you?

Answer. I think I did.

5th x-int. Did not you shake hands with him when he parted from you?

Answer. No, sir.

6th x-int. Did you shake hands with Henry C. Wilson, when you parted from him?

Answer. I have no recollection of it; I might have done so, as my acquaintance was longer with him. I think we parted by saying good night at my front door.

7th x-int. Did you hear the name of this man when he was introduced to you by Henry C. Wilson?

Answer. I did hear the name, but it was a queer one. I could not remember it even until I got up into my drawing room. When I asked him up to take a drink with us I could not call him by name, and I did not think it worth while to ask Mr. Wilson to repeat his name. I merely said, "Sir, will you take a drink?" I know it was not Wilson.

8th x-int. How did you find out, and when, that the procession was a McClellan procession?

Answer. At the time of my former testimony, I was under the impression that there was more than two processions about that time between the State and presidential elections. The Lincoln procession was previous to the State election, and the McClellan was previous to the November election. After my return home, I took the trouble to ascertain these facts. The State election was on the 11th of October, and the presidential election on the 8th of November.

9th int. Have you any other way of fixing the date of the interview, to which you have testified than that it was on the night
133 of a political procession?

Answer. I know it was on the night of a political torch-light procession. I know it was not on the night of the Lincoln procession, from the fact that my memory has been refreshed since my first examination, and I now recollect that I fixed my lights in my windows on the night of the Lincoln procession, then left early in the evening, I think before seven o'clock, leaving my family to take care of the company in the house; went down on to Broad street, where they were marching and countermarching, with my own ward delegation, and did not return till late, say 10 o'clock or after, and then did not stay in the house ten minutes. I went down on the corner, and remained there for an hour for the purpose of spotting out some rowdies who were disturbing the procession.

10th x-int. How near your house did the procession pass?

Answer. One hundred and fourteen feet, and did not pass in front of my house.

134 11th x-int. At what hour did the procession pass the corner near your house?

Answer. It commenced about nine o'clock, as I was informed, and lasted until twelve.

12th x-int. Was your house illuminated at the time of the Lincoln procession?

Answer. It was, brilliantly, from the cellar to the garret.

13th x-int. Did you not know, when you were examined-in-chief, whether your house was illuminated or not, the night that Wilson was there according to your testimony?

Answer. I did, and so stated it then; at least I think I did; that it was not illuminated.

14th x-int. Why was it that you failed to recognise Henry C. Wilson when he first spoke to you?

Answer. For three reasons, first, his personal appearance was so different from when I saw him last, having his face covered with hair, and never having seen him thus equipped before; second, the

parties in the procession were throwing rockets, and lights up with torch-lights, which caused a glare at intervals; third, between
135 those intervals, the darkness was greater apparently, and during the darkness of one of those intervals, Mr. Wilson approached me.

15th x-int. State whether or not in your examination-in-chief you stated which of the processions was moving the night Wilson was at your house.

Answer. In the examination before I said I thought at the time it was a democratic procession.

16th x-int. If at that examination you knew he was at your house the night when the procession was moving, for which your house was not illuminated, why did you not state positively which procession was moving the night he was there?

Answer. I always wish to be particular, and if there be any doubt, to give others the advantage of it, and this was one of the cases. I did not expect to be called to answer the question. Subsequently to my examination here, I revolved all matters in my mind with every connecting link, which brought everything connected with the matter more clearly to my mind.

136 17th x-int. Had you any doubt, at the time of your examination-in-chief, whether your house was illuminated or not the night Wilson was there?

Answer. No; I had no doubt, and so stated at the time that everything was dark, and I was alone.

18th x-int. Did you not, soon after the alleged conversation with Wilson, make a statement of what had occurred, by word or letter, to some of the officers of the gas company?

Answer. Some 60 or 70 days subsequent to his visit to my house, I called to see Mr. Bartol on business, who was at that time acting as president of the company, in place of Mr. Riggs, resigned. My main business with Mr. Bartol had nothing to do with the gas company. After we got through with our business, our conversation was turned towards the Washington Gas-light Company, in which conversation he criticised severely on some parts of its management, in which conversation the Wilson contract was brought up as one, and he said it was his intention as president to do things dif-
137 ferently from what Mr. Riggs done, and have written and sealed contracts for everything, and stated at the time, that negotiations and contracts had been entered into upon mere proposals by letter and otherwise, much to the disadvantage of the company, and mentioned Wilson's contract for one. At which time I told him that I had had the conversation with Wilson to which I have testified.

19th x-int. Did you not, prior to that time or soon after, write to Mr. Brown on the subject, and if so, when?

Answer. Subsequently, on January 15, 1865, I wrote Mr. Brown of Mr. Bartol, the president's, criticism, and in that letter I might have mentioned this conversation.

20th x-int. State what interest you have in the Washington Gas-light Company?

Answer. I am a shareholder. I have 556 shares par value $20 a share, and worth par value in market.

SAM'L R. BRICK.

Sworn to and subscribed before me, this 21st day of October, 1865.

EDM. F. BROWN,
Examiner in Chancery.

138 Adjourned to Wednesday next at 12 o'clock noon.

EDM. F. BROWN, *Examiner.*

WEDNESDAY, 25*th October*, 1865.

Met pursuant to adjournment.

Charles Hart Smith recalled by complainant's counsel:

I never received any letter from Mr. Joseph F. Brown inviting me to make proposals for gas tar, prior to 1st June, 1864, nor did I ever correspond with Mr. Brown until after 1st December, 1864.

I had a long conversation with Mr. Brown on the 27th December, 1864, at his office in Washington. He told me at that time, in answer to inquiry, that the reason why Wilson had not made monthly payments after the month of June, 1864, was that he had pleaded poverty, when the monthly bills were presented to him, and wished to pay it semi-annually.

In the same conversation Mr. Brown told me that he was satisfied at the time, from some things he had heard from others, and from what Mr. Brick had told him, that the bid of the Warren Roofing Company, of 65 cents per ton, was not a bona fide bid, and
139 only made to force Wilson up on the price of the tar, and that he knew it was too high a price for the tar. At the same time I asked Mr. Brown if he wished to cancel Wilson's contract, on the first of June, 1864, why he, Brown, did not comply with the requirements of it by refusing to renew it on that day. He said that he did not refuse to renew it, because it was not necessary to refuse to renew it, as the contract expired by its own limitation.

On or about the 26th of January, 1865, I presented to Mr. Brown at his office an order for the tar, signed by Mr. Bartol, the president of the company, under the temporary arrangement made between us, when Mr. Brown said, "I see by this that Mr. Bartol gives you three months' time on the tar, but he, Bartol, gave me hell, because I gave Wilson a little time, and let his account run a few months, when he was not able to pay it."

(Mr. Kennedy, counsel for defendant is present, and declines asking any questions, and waives all objection to the foregoing examination of Mr. Smith, so far as the foundation had not been laid for the same by previousiy interrogating Mr. Brown as to the

140 time and place referred to by Mr. Smith, for the alleged conversations.)

C. HART SMITH.

Subscribed before me, this 25th October, 1865.

EDM. F. BROWN, *Examiner.*

The counsel on both sides now declare the testimony closed, and I close it accordingly.

And I, the said examiner, do hereby certify that all the several witnesses hereinbefore named, were by me first duly examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; that their several depositions were written down by me in their presence, and then read over to them, respectively, by me, and signed by them in my presence.

And I further certify that I am not of counsel or attorney for either of the parties to this suit, nor in any way interested in the result of it.

In testimony whereof I hereunto set my hand and seal, this 25th day of October, A. D. 1865.

[SEAL.]

EDM. F. BROWN,
Examiner in Chancery.

141 CHARLES HART SMITH
vs.
THE WASHINGTON GAS-LIGHT COMPANY. } 417 equity.

This cause set for hearing on Wednesday, 7th inst., by consent of counsel.

KENNEDY & WEBB,
For Defendants.
BRENT & MERRICK,
For Complainants.

Feb'y 1st, 1866.
(See order book, 117.)

Decree dismissing bill and appeal.

CHARLES HART SMITH
vs.
WASHINGTON GAS-LIGHT COMPANY. } 417 equity.

This cause coming on to be heard upon bill, answer, exhibits, depositions, &c., and having been argued by counsel and duly considered, it is by the court, this sixth day of March, 1866, ordered, adjudged, and decreed that the bill of complaint be dismissed.

From which decree the complainant prays an appeal, which is hereby granted.

By order of the court.

Filed March 6, 1866.

142 *Decree affirming the orig'l decree on appeal.—Recorded eq. min. 2, p. 122.*

In the supreme court of the District of Columbia, at a general term, May 17, 1866.

CHARLES HART SMITH
vs.
THE WASHINGTON GAS-LIGHT COMPANY. } Equity—417.

MAY 18, 1866.

The appeal in this cause standing ready for hearing, and the proceedings having been considered, and it appearing to this court that there is no error in the decree of the court, sitting at special equity term, dated on the 6th day of March, in the year 1866, from which the said appeal was taken.

It is thereupon, this 18th day of May, in the year 1866, by the supreme court of the District of Columbia, in general term, adjudged, ordered, and decreed that the aforesaid decree be, and the same is hereby, affirmed; and that the said appellant pay to the appellee his costs on this appeal, to be taxed by the clerk of this court.

By order of the court.

143 *Order for appeal.—Filed July 5, 1866.*

C. HART SMITH
vs.
THE WASHINGTON GAS-LIGHT COMPANY. } In equity.

Mr. Meigs:

Enter an appeal in the above case to the Supreme Court of the United States, and issue citation to the defendants.

July 5, 1866.

BRENT & MERRICK,
For Appellant.

Citation.

In the supreme court of the District of Columbia, July 5, 1866.

CHARLES HART SMITH, compl't,
vs.
THE WASHINGTON GAS-LIGHT COMPANY. } 417 equity.

144 The defendant is hereby cited and admonished to appear in the Supreme Court of the United States, on the first Monday of December, 1866, to which court the complainant has prosecuted an appeal from the final decree of said supreme court of the District of Columbia, pronounced on the 18th May, 1866.

D. K. CARTTER,
Ch'f Justice.

Service acknowledged July 5th, 1866.

KENNEDY & WEBB,
Solicitors for Appellee.

Filed July 5, 1866.

Appeal bond.

In the supreme court of the district of Columbia, July 5, 1866.

CHARLES HART SMITH, compl't,
vs.
THE WASHINGTON GAS-LIGHT COMPANY. } 417 equity.

The complainant and E. H. Murray acknowledge themselves indebted to the defendant in the sum of two hundred and fifty dollars, for the payment of which they bind themselves and each of them, their and each of their heirs and personal representatives, if
145 the complainant fail to pay such costs and damages as may be adjudged against the said complainant by the Supreme Court of the United States, to which he has prosecuted an appeal from the final decree of the supreme court of the District of Columbia, pronounced on the 18th of May, 1866, for his failure to prosecute said appeal with effect.

Witness the hands and seals of said complainant and his surety.

[SEAL.] C. HART SMITH.
[SEAL.] E. H. MURRAY.
Witness: R. J. BRENT.

The foregoing bond, as surety, affirmed this (5th) fifth day of July, A. D. 1866.

D. K. CARTTER,
Ch'f Justice.

Filed July 5, 1866.

146 *Copy of Exhibit F.—E. F. B.—(Ante, p. 67.)*

Charter of the Washington Gas-light Company, and other acts of Congress, affecting said company, with the by-laws established in pursuance of the act of incorporation:

CHARTER.

An act to incorporate the Washington Gas-light Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asssembled, That John F. Callan, Jacob Bigelow, B. B. French, W. H. Harrover, M. P. Callan, W. A. Bradley, and W. H. English, and their present and future associates, are hereby declared to be a body politic and corporate by the name and style of the Washington Gas-light Company, and by the same name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, in all courts of law and equity in the District of Columbia and elsewhere, and to make and have a common seal, and the same to break, alter, and renew at pleasure, to ordain and establish such by-laws, ordinances, and regulations, and generally to do every act and thing necessary to carry into effect this act, or to promote the objects and designs of this corporation.

SEC. 2. *And be it further enacted*, That the capital stock of this corporation shall not exceed fifty thousand dollars; that a share in the same shall be twenty dollars; and books of subscription to the said capital stock, or to such portions thereof as from time to time may, by the directors for the time being, be deemed proper and necessary, shall be opened by the appointment or under the direction of the directors hereinafter named, subject to such rules, limitations, and conditions, as by them shall be prescribed; and the stock of the said corporation shall be deemed personal property.

SEC. 3. *And be it further enacted*, That the stock, property, and affairs of the said corporation shall be managed and conducted by or under the direction of five directors, being stockholders; that the said directors shall hold their offices for one year from the second Monday, and shall be elected on the first Monday in January, in each year, at such time and place in the city of Washington as a majority of the directors for the time being shall appoint; and that notice of such election shall be published in at least two of the public newspapers printed in the city of Washington, at least fourteen days previous to the time of holding such election; and every such election shall be by ballot, and by such of the stockholders who shall attend for that purpose, either in person or by proxy; and each stockholder shall be entitled to one vote for each share of the stock which he or she may have held in his or her own name for at least fourteen days before the time of voting; and the persons having the greatest number of votes shall be the directors; and if it shall happen that two or more persons have an equal number of votes the directors in office at the time of such election shall, by a plurality of votes, given by ballot, determine which of the persons so having an equal number of votes shall be director or directors, so as to complete the whole number to be chosen; and the directors so chosen shall, as soon as may be thereafter, proceed by ballot to elect one of their number for their president, and whenever any vacancy shall happen, the same shall be filled up by the remaining directors by plurality of votes, until the next annual election.

SEC. 4. *And be it further enacted*, That John F. Callan, Jacob Bigelow, B. B. French, W. H. Harrover, M. P. Callan, and W. A. Bradley shall be the first directors of the said company, who shall hold their offices until the second Monday in January, in the year of our Lord one thousand eight hundred and forty-nine, and until others are chosen in their places; and they shall proceed to choose their president at such time and place as they or a majority of them shall determine.

SEC. 5. *And be it further enacted*, That in case it shall at any time happen that an election for directors shall not take place on the day appointed by this act for that purpose, the said corporation shall not, for that cause, or for any non-user, be deemed to be dissolved, but it shall and may be lawful to hold an election for directors on any other day, in such manner as shall be provided for by the by-laws of the said corporation.

SEC. 6. *And be it further enacted*, That it shall and may be lawful

for the directors, or a majority of them, to require payment of the subscription to the capital stock of the said corporation, at such times and in such proportions as they, or a majority of them, shall deem fit, under the penalty of forfeiting all previous payment or payments thereon; and that previous notice of the instalments required to be paid shall be published at least fourteen days in two of the public newspapers printed in the city of Washington.

SEC. 7. *And be it further enacted*, That the president and directors shall have full power and authority to manufacture, make, and sell gas, to be made of coal, oil, tar, peat, pitch, or turpentine, or other material, and to be used for the purpose of lighting the city of Washington, or the streets thereof, and any buildings, manufactories, or houses therein contained and situate, and to lay pipes for the purpose of conducting gas in any of the streets, avenues, and alleys of the said city; and also that the said company will so conduct the manufactories of gas as not to injure private property or create a nuisance: *Provided, however*, That the said pipes shall be subject to such conditions, and in compliance with such regulations as the corporation of Washington may from time to time prescribe: *And provided further*, That the right to erect or put up any buildings, works, or apparatus for the manufacture of gas shall be subject to such terms, conditions, restrictions, and regulations as the said corporation of Washington may or shall, from time to time, prescribe or direct.

SEC. 8. *And be it further enacted*, That if any person or persons shall wilfully do, or cause to be done, any act or acts whatever, whereby the works of said corporation, or any pipe, conduit, plug, cock, reservoir, or any engine, machine, or structure; or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person or persons so offending shall forfeit and pay to the said corporation double the amount of the damage sustained by means of such offence or injury, to be recovered in the name of the said corporation, with costs of suit, in any action of debt, to be brought in any court having cognizance thereof.

SEC. 9. *And be it further enacted*, That nothing in this act shall be construed to prevent any person or persons, nor any incorporated company hereafter to be created by Congress for that purpose, from engaging in and pursuing the business specified in the seventh section of this act; and that it shall be lawful for Congress, at any time hereafter, to alter, amend, or repeal this act.

SEC. 10. *And be it further enacted*, That nothing in this act contained shall be construed to authorize the said Washington Gas-light Company to make, issue, or put in circulation any bill, draft, check, order, promissory note, change ticket, or anything else promising or agreeing to pay money, intended to circulate as money or the tendency of which shall be to circulate as money or currency; and the violation of any one of the provisions of this section shall be a forfeiture of the charter herein granted, and a fine of fifty dollars against each of the directors voting for the same.

SEC. 11. *And be it further enacted*, That each of the stockholders in the Washington Gas-light Company shall be held liable in his or her

individual capacity for all the debts and liabilities of the said company, however contracted or incurred, to be recovered by suit, as other debts or liabilities before the court or tribunal having jurisdiction of the case.

Approved July 8, 1848.

Acts of Congress amendatory, &c., of the foregoing charter.

An act to amend an act entitled "An act to incorporate the Washington Gas-light Company," approved July 8, 1848.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to incorporate the Washington Gas-light Company," approved July 8, 1848, be, and the same is hereby, amended by inserting in the second section, immediately before the word "fifty," the words "three hundred and," and in the seventh section, wherever the word "Washington" occurs, by inserting immediately thereafter the words, "and Georgetown."

Approved August 2, 1852.

An act to incorporate the Georgetown Gas-light Company.

* * * * * * * *

SEC. 12. *And be it further enacted*, That all right granted to the Washington Gas-light Company by an act entitled "An act to amend an act entitled an act to incorporate the Washington Gas-light Company, approved July 8, 1848, approved August 2, 1852," to lay gas mains or pipes in the city of Georgetown be, and the same is hereby, repealed.

Approved July 20, 1854.

An act authorizing the Washington Gas-light Company to increase the capital stock of said company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the "Washington Gas-light Company" be, and the same hereby is, authorized to increase the capital stock thereof one hundred and fifty thousand dollars.

SEC. 2. *And be it further enacted*, That the said stock shall be subscribed on the books of said company in shares of twenty dollars, and the holders of the said increased certificates of stock shall be held subject to the same liability as is provided in the eleventh section of the original act of incorporation, approved July 8, 1848.

Approved January 3, 1855.

An act making appropriations for sundry civil expenses of the government for the year ending the thirtieth of June, eighteen hundred and sixty-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * *

* * * * * * * *

For lighting the Capitol and President's house, the public grounds

around them and around the Executive offices, and Pennsylvania avenue, Bridge, and High streets in Georgetown, Four and-a-half, Seventh, and Twelfth streets across the mall, forty-two thousand dollars. And the act incorporating the "Washington Gas-light Company" is hereby so amended as to prohibit said company from receiving, after the thirty-first day of December next, more than thirty-five cents per hundred cubic feet of gas, furnished by it to any consumer, subject to a discount of not less than ten per centum on all bills for gas, if paid at the office of said company within five days from the rendition thereof, provided all arrears shall have been previously paid.

* * * * * * * *

Approved June 25, 1860.

An act to provide internal revenue to support the government and to pay interest on the public debt.

* * * * * * * *

SEC. 75. *And be it further enacted*, That * * * * * * all gas companies are hereby authorized to add the duty or tax imposed by this act to the price per cubic foot on gas sold: * * * * * *

Approved July 1, 1862.

An act making further appropriations for sundry civil expenses of the government for the year ending thirtieth of June, eighteen hundred and sixty-three, and additional appropriations for the year ending thirtieth June, eighteen hundred and sixty-two.

* * * * * * * *

SEC. 3. *And be it further enacted*, That * * * To supply the deficiency in the appropriation for lighting the Capitol and public grounds, twelve thousand dollars.

And the act incorporating the "Washington Gas-light Company" is hereby so amended as to prohibit the said company from receiving, after the first day of July, eighteen hundred and sixty-two, more than twenty-eight cents per hundred cubic feet of gas furnished by it to the government, and thirty cents to other customers, subject to a discount of not less than ten per centum on all bills for gas, if paid at the office of said company within five days from the rendition thereof, provided all arrears shall have been previously paid.

* * * * * * * *

Approved July 11, 1862.

An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes.

* * * * * * * *

SEC. 94. *And be it further enacted*, That * * * * * all gas companies are hereby authorized to add the duty or tax imposed by law to the price per thousand cubic feet on gas sold: * * * * *

Approved June 30, 1864.

By-laws of the Washington Gas-light Company.—Established in pursuance of the first section of the charter, and adopted October 19, 1849.

I.

At each annual meeting of the Washington Gas-light Company, the president shall lay before the stockholders a full report of all the operations of the company, stating particularly the amount of property, both real and personal, owned by the company, the receipts and expenditures during the year, and making a general exhibit of the condition of the company; and, that this may be done, it shall be the duty of the board of directors to cause the accounts between the president and the company, and all other accounts, to be closed and adjusted at their regular meeting in December, annually.

II.

The board of directors shall, immediately after the annual election of the president, proceed to elect two members of the board, and one stockholder, not a member, as a committee on accounts, and a secretary, who shall not be a member of the board.

III.

It shall be the duty of the president to preside at all meetings of the stockholders and directors; he shall appoint all agents and officers of the company, except such as are, by charter, or by these by-laws, to be elected by the stockholders or board of directors; and he may dismiss, at will, any person by him appointed; he is hereby made responsible for the safe keeping and proper use of the property of this company, for the proper keeping and rendition of accounts, and for the performance of every duty in its character purely executive, in strict subordination, however, to such general rules and regulations as the stockholders or board of directors may from time to time prescribe.

The president shall have power to enter into any contract that he may think for the interest of this company, but no contract shall be binding upon the company until it has been approved by the board of directors—is reduced to writing, signed by the president, and the person or persons with whom it is made, countersigned by the secretary, and the seal of the company thereto affixed. He shall receive all the moneys due and belonging to this company, and shall deposit the same in such institutions in the city of Washington as may be approved by the board of directors, in which he shall open a regular bank account, keeping an official bank book, which shall at all times be open to the examination of the board of directors, or any one of them. He shall as often as once in every quarter, and as much oftener as the board of directors may require, submit to the board of directors his official accounts, and they shall examine and compare the same in such manner as they may deem proper, and cause the state thereof to be entered upon the journals of their proceedings. He shall give bonds to this company, in such sum as the board of di-

rectors shall prescribe, and to their satisfaction, conditioned to account for, and on demand of the board to pay over to them all the moneys of this company in his hands or to his credit.

He shall submit to the committee of accounts, at the close of every month, all his accounts for moneys paid out during the month, and it is hereby made the duty of the committee to examine, and if they think proper, to approve said accounts, which approval shall be in writing, and no account shall be finally passed to the credit of the president unless approved by said committee.

IV.

It shall be the duty of the secretary to keep a journal of all the proceedings of the meetings of the stockholders and board of directors. He shall keep a book in which he shall enter, as often as the same may be submitted to the board of directors, all the accounts of the company, showing, at all times, the balances in favor of or against the company. He shall keep a regular set of stock certificate books, all which books shall be open at all times to the examination of the stockholders and board of directors, or to any one of them. He shall issue all notices required by the charter, or by the president or board of directors, and he shall preserve copies of the same in such manner as that they may be referred to, as evidence, if required. He shall attend all meetings of the directors or stockholders; he shall keep the seal of the company, and he shall perform all other duties pertaining to the office of secretary.

V.

The board of directors shall meet as often as once in each month, and at such other times as the president may think proper to call them together. They shall fix the salaries and compensation of all the officers and agents of this company, but no compensation, further than to reimburse any actual expense of a director, in the discharge of his duty, shall be allowed to any director, unless by a vote of the stockholders. They may call meetings of the stockholders whenever they may deem it necessary, by giving one week's notice in at least two newspapers printed in Washington, of the same. "And in case it shall at any time happen that an election for directors shall not take place on the day appointed" by the charter, the board of directors shall, at their first meeting thereafter, fix a day for an election, and call a meeting of the company, giving the same notice as is above specified.—(See sect. 5th of the charter.)

VI.

The seal of this company shall be circular, and there shall be inscribed thereon, "Washington Gas-light Company, chartered by Congress, 1848."

VII.

Certificates of the stock of this company, in such form as the directors may specify, for shares of twenty dollars each, and no certificate

shall be for a less sum, shall be issued to persons owning stock therein, which certificates shall be signed by the president, and countersigned by the secretary, and the seal of the company shall be affixed to each certificate—they shall be assignable only in writing on the back of the certificate, and a surrender thereof to the secretary, who shall cancel all certificates thus surrendered, and issue others in lieu thereof. And all holders of the certificates of the stock of this company, in their own and proper names, shall be members of the company, and shall be entitled to vote, in person or by proxy, on all questions which may arise at any meeting of the company, and each person thus voting shall be entitled to give one vote for each share thus held, provided he or she may have held the same for fourteen days previous to such meeting.—(See charter, sect. 3.)

VIII.

At the meeting of the directors of this company in December and June, semi-annually, if they shall, upon examination of the fiscal affairs of the company, find that the clear profits of the company amount to three per cent. or more upon the capital stock invested, they shall declare a dividend of three per cent. or more, as circumstances may justify them in doing. And when such dividends are declared, the president shall pay the amount due to each stockholder on demand.

IX.

These by-laws may be amended at any regular meeting of the stockholders by a vote of two-thirds of the stock represented at such meeting.

Amendments to the by-laws.

I.

Strike out that portion of article VII (sixth and seventh lines) which read "they shall be assignable only in writing on the back of the certificate, and a surrender thereof to the secretary," and substitute therefor the following: *they shall be assignable only by transfer on the books of the company by the owner in person, or by his attorney, and a surrender of the certificate to the secretary.*

Adopted, January 5, 1857.

II.

No director, officer, or employee shall be pecuniarily interested, directly or indirectly, in any contract, bargain, agreement or award wherein the company shall be a party; and any and all contracts, bargains, agreements, or awards hereafter made in violation of this by-law, shall be utterly void, and not binding on the company.

Adopted, January 7, 1861.

O

IN THE

Supreme Court of the United States,

DECEMBER TERM, 1868.

C. HART SMITH

VS.

THE WASHINGTON GAS LIGHT CO.

APPELLANT'S BRIEF.

IN THE

Supreme Court of the United States,

DECEMBER TERM, 1868.

C. HART SMITH

VS.

THE WASHINGTON GAS LIGHT CO.

APPELLANT'S BRIEF.

The complainant claimed by his Bill the specific performance of a written contract made by the defendant with Charles Wilson, the assignor of the complainant, for gas tar for the term of five years, at an annual rent of $500, from the 1st of June, 1859. See p. 1–3.

The contract ("Exhibit A") contained a stipulation that in case of the Company's "refusal to renew it at the expiration of the five years, with Wilson, his administrators, heirs or assigns, for the same amount per year, and upon the same conditions as herein specified, then in that case to return to him or them the last year's payment of $500." And Wilson therein agreed "to renew the contract for five years from the 1st June, 1864, should said Company so desire," on same terms, &c.—P. 4.

On the 14th November, 1859, Charles Wilson assigned the contract to H. C. Wilson & Co., and on the 8th April, 1861, Wilson & Co. assigned to H. E. Wilson individually.—P. 5.

The Bill charged that after 1st June, 1864, the Company continued to deliver gas tar to said Wilson, as under said contract, and claims a renewal for another term of five years.

The answer denies such delivery, and an issue is made on that point.—P. 7 and 5.

The affidavit of Brown, Secretary, is only to the truth of the facts stated in the answer, of his own knowledge; and as the answer does not distinguish what is alleged upon his knowledge, the affidavit goes for nothing, and the rule of law requiring two witnesses, &c., to outweigh a sworn answer responsive to the Bill, does not apply.

Fulton Bank vs. N. York Canal, 1 Paige, 311.

H. C. Wilson swears positively that he received the tar from the Company from June, 1864, to December, under the contract as renewed, by consent of parties.

P. 21, Ans. 1st.
P. " Ans. 4th.
P. " 7th Cross-Int.

And to attest the good faith on which he acted, we find that on the 8th June, 1864, he renewed, for five years, his lease of the premises on which his operations were carried on, and which were fit for no other business.

P. 21, Ans. 4.
" 12, " 14.

On the 21st December, 1864, he pays to Hall, the cashier, half a year's rent on the renewed lease.

See Exh. B, p. 5.

Hall does not recollect that he ever received any payments before, but he admits his duties were to collect gas bills, &c. P. 23.

But Wilson positively swears that he had some times paid Hall, the cashier, prior to 1st June, 1864.

P. 22, Cross-Int. 4.

The testimony of Mr. Hall, in regard to Wilson's seeking his influence with Brown, the Secretary, to get the tar, (or by

implication the contract renewed,) is not fixed by the witness in point of time, and may relate to a period antecedent to the expiration of the original term, and may have materially contributed to its renewal.—P. 24.

Mr. Brown, for defence, swears that he notified Wilson he would not renew the contract some time before it expired, and produces a proposition from H. C. Wilson, dated the 31st May, 1864, to buy the tar for one year.—P. 28.

But all his testimony is contradicted and rebutted by H. C. Wilson, who shows that Brown procured this proposal, and left the amount of bid blank, to use it only if any other bidder should appear on the 1st June.—P. 46.

And this statement is corroborated by Brown's own confession that the figures for the bid in the proposal are filled in by him, while all the rest of the proposal is in Wilson's handwriting.

See p. 28, Ans. 8th.

Mr. Brown is the Ajax of this defence, and he seems to have been the Ajax of the Company, for by his own showing he had absorbed all the powers of the corporation in himself as Secretary.

The third section of the charter enacts that the affairs of the Company shall be managed and directed by five Directors. Page 58.

And the third article of the by-laws prohibits the President from making a binding contract until it is approved by the Company.—P. 62.

The fourth by-law, p. 63, defines the duties of the Secretary as merely clerical.

We shall endeavor to show, by a close analysis of his testimony, the powers assumed by Mr. Brown as Secretary, and the contradictions in which he has involved himself.

REVIEW OF THE TESTIMONY OF J. F. BROWN, THE MAIN WITNESS FOR THE DEFENCE.

1st. He says he notified Wilson as far back as February, 1864, that the contract would not be renewed, and he did this by direction of the President and a majority of the Directors.—P. 26.

On this point he is flatly contradicted by H. C. Wilson.—P. 40, top.

But if every contract must, by the third article of the by-laws, be approved by the Board of Directors, then we hold that a notice to terminate a contract which, without such notice, would renew itself, must equally require the action of the Board, or it is a nullity.

Mr. Brown shows no action of the Board, but only the direction of the President and a majority of the Directors, to give the notice he refers to.

As this was manifestly the separate and individual action of members of the Board, it is no act of the corporation.

A. & A. on Corp., secs. 231–2.

If these views be correct, no legal notice to terminate the contract was proved.

2. He asserts that he sent letters to C. Hart Smith, as well as others, inviting bids.—P. 26.

Contradicted by Smith.—P. 54.

3. He says he received proposals on the 31st May, 1864, from the Warren Roofing Company.

See page 27.

But he admits that he filled up a blank in Wilson's proposals left in his hands. for the express purpose of enabling him, collusively, to defeat all other bidders.

See p. 28, 8th Int.
" 29, 9th Int.

4. He shows that no Board was in session on the 1st June, 1864, or until 30th June, 1864, and that no action of the Board could have taken place 1st June, 1864.—P. 29.

He says Wilson asked him on the 1st June, 1864, what was to become of the tar until the Board met, and that he (the Secretary) told him to go on and receive the tar until the Board awarded him the contract on his bid, as he had no doubt they would, and it would then relate back. –P. 29.

And in this way only does he seek to avoid the admitted fact that Wilson continued, after the 1st June, 1864, to receive the tar as before.

5. He admits that he changed Wilson's bid "from *one year to two*, and made it payable monthly, and conditioned only upon closing the gas works during that period."

See Wilson's bid, p. 28.
Brown's letter, 1st July, 1864, p. 30.

Upon this testimony it is clear that the Board never accepted Wilson's bid in the terms expressed on its face, but if Brown's letter is to be credited in the absence of any resolution of the Board, he got the Board to accept what was never tendered by Wilson. Therefore, there was no new contract entered into between the Company and Wilson, even on the 1st July, 1864; nor could the conversation testified to by Brown, as occurring a few days afterwards, make that which *was no contract* binding either on the Company or Wilson.—P. 30.

6. He states that he then (in July, 1864) asked Wilson if he should then return him the $500 required by the old contract to be returned if the Company refused to renew, and Wilson said "it could be credited at next settlement."—P. 30.

Yet he confesses that on the 2d June, 1864, he had collected $250 from Wilson, for the tar delivered in the preceding six months, and for which he gave his receipt to Wilson, *dated 2d June*, 1864.

Page 35.
Receipt, in p. 17.

Now, this is most important, because if on the 2d June, 1864, the renewal of contract was refused, it was stipulated on the face of the contract that the whole $500, paid in semi-annual instalments, for the year anterior to 1st June, 1864, should be returned to Wilson.—P. 4.

How inconsistent is this documentary evidence, under the hand of Brown, with the theory set up against us that the renewal was refused, and known to be refused as far back as February, 1864?

His explanation that he collected that $250 on 2d June, 1864, because of the previous understanding with Wilson that this drawback, as he calls it, of $500, was to be a credit in a future settlement, is virtually refuted by the fact stated by Brown that on 1st July, 1864, when the Company had accepted the altered bid, he (Brown) then offered to return the drawback, in utter oblivion of the arrangement that it should be retained and credited at the future settlement.—See pages 30 and 36.

7. He then states that the reason why he sent in no monthly bills to Wilson as stipulated in the contract, was that he had agreed it should not be done until Congress passed some expected law to increase the tariff rates of the Company.

P. 37, 34th Cross Int.

And therefore he allowed the bill to accumulate to $4,414.-90, and only sent it on 24th December, 1864, (a Christmas gift,) when he heard that Wilson was claiming a renewal of the contract, and had assigned to Smith.

See bill, p. 31.

And why it was then made out.

P. 32.

But Brown is flatly contradicted by Smith, who swears that he stated the bill was not sent in because Wilson was poor.

Page 54.

8. But Mr. Brown, upon the whole evidence, seems to be placed in the unenviable position, as an officer of the Company, of holding a blank bid of Mr. Wilson, to be used *ostensibly* by

him to defeat a single competitor, but really to deceive Wilson, under the profession that his bid would not be regarded as a real one, into a new contract at a high price for *two years*, when he had only bid *for one*.

Brown's declarations to Wilson and Smith were, that the bid of that single competitor was not *bona fide*.

See pages 46 and 54.

And yet he takes the liberty of altering Wilson's bid from one to two years, at the high figures of an illusory bid by the Warren Company for one year. And still further to deceive Wilson, receipted to him on the 2d June, 1864, as if the old contract was renewed, and thenceforth continued to deliver tar to him for over six months, without sending any bill to him, until after Wilson, acting in good faith, as all his acts attest, had sold out to an innocent purchaser for $14,000, who is now the complainant.

9. If Brown sent the letter to Wilson of 1st July, 1864, as he swears he did, (p. 30,) it will be observed first, that there is no proof of the Board having acted on the case at all; secondly, that when that letter was dated, the tar had been delivered daily to Wilson for a month prior, under the belief on his part that the old contract had been renewed.

But Wilson shows how even then he was deluded by the artful representations of Brown, and positively denies all Brown's statements.

P. 47.

We submit that Mr. Brown cannot be relied on to defeat the renewal of the lease.

Brick's statements are contradicted by two witnesses.

See pages 45 and 48.

POINTS OF LAW.

1st. The onus was on the Company to notify Wilson of its refusal to renew, and pay the stipulated penalty of $500,

its unilateral privilege must be taken strictly

Story on Contracts § Story Eq. Jurisp. 433

If there be any doubt, from the wording of the lease, the law construes the doubt against the landlord, on the principle that every man's grant shall be taken most strongly against himself.

Taylor on Land. and Ten. § 81.
9 East. 15.
7 Wend. 214.

If it is a case of silent holding over, the law implies a renewal of the old lease.

Taylor on Land. and Ten. § 58.

A fortiori in our case, where the Company's Secretary, on the 2d June, 1864, receipted for $250 which the Company had no right to receipt for, if they meant to refuse a renewal, but should further pay $250 as penalty for the refusal.

This matter was to be decided, by the terms of the contract, on the 1st June, 1864. It was then to be refused under a penalty, or renewed. Wilson had no option

The Board never acted on the question, and Brown only claims that it acted a month after.

We therefore maintain, upon the facts as they stood on the 2d June, 1864, when Brown signed the decisive receipt and took the $250 from Wilson for the past six months' rent, the contract was in fact renewed.

2d. This corporation is bound by the acts of its agents, and the renewal may be inferred by circumstantial evidence.

12 Wheat. 70, &c.
18 Grattan, 356-300-1

But this is not a case between the original parties, and subject to equities as between them.

The complainant is an innocent third party, and has been induced to purchase the interest of Wilson and pay $14,000 for an assignment of the renewed term of this contract, with all the buildings and accompanying lease of the premises.

Pages 5 and 14.

He swears he saw the contract, and therefore knew it was assignable; and he saw the receipt of Brown, the Secretary, dated 2d June, 1864, and the receipt of the cashier, Hall, on 21st December, 1864, all of which deluded and lulled him into the belief that the contract had been renewed.

See his evidence, pp. 12, 14, 16.

The Company, by these acts of its agents are equitably estopped from setting up its defences against Smith, who paid $14,000 on the faith of these acts, however good they might be as against the assignor.

2 Story Eq., secs. 1538, 1542, 1546.

7 H. & J. 336.

24 How 287

The case should be reversed, and sent to an Auditor to settle the accounts, according to the provisional arrangements set forth in the correspondence, &c.

Pages 15, 16, 17, 18, 19, 20.

R. J. BRENT,
R. T. MERRICK,
For Appellant.